

When Recorded Mail To: RWK Investments
7847 Pheasant Wood Drive
Sandy, Utah 84093

9588551
12/21/2005 12:13 PM \$45.00
Book - 9233 Pg - 1530-1547
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
LANDMARK TITLE
BY: EPM, DEPUTY - WI 18 P.

JOINT DEVELOPMENT AGREEMENT

THIS JOINT DEVELOPMENT AGREEMENT (the "Agreement") is entered into as of the 17 day of November, 2005, between RWK Investments, LLC, or its assigns ("Seller"), whose address is 7847 South Pheasant Wood Drive, Sandy, UT 84093, and HEP Development, LLC, a Utah limited liability company, or its assigns ("Buyer"), whose address is 7613 Jordan Landing Boulevard, Suite 200, West Jordan, UT 84084.

WHEREAS, Seller and Buyer entered into an agreement (the "RH Agreement") for the sale and purchase of real estate on or about January 5, 2005, and modified April 27, 2005, as to that real property described in Exhibit "A" hereto, and

WHEREAS, in conjunction with a purchase and sale agreement for sale of real property by Seller to KRAFTMAID CABINETRY, INC., which real property is contiguous or in the proximate vicinity to the real property described in Exhibit "A", the City of West Jordan (the "City") has placed certain restrictions on the development of the real property described in Exhibit "A" and related property also owned by Seller under a Development Agreement between Seller and the City (the "CDA") and

WHEREAS, it is in the mutual interest of Seller and Buyer to enter into a joint development agreement for sole purpose of the construction of Public Improvements and utilities for that part of the Wells Park Road that is contiguous to Parcels 2 and 3, the real property described in Exhibit "A", and other property presently owned by Seller, reflecting and addressing the requirements and restrictions imposed upon Seller and Buyer by the City under the CDA

NOW THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency is hereby acknowledged by Seller and Buyer each to the other, it is hereby agreed as follows:

1. Under the CDA, a copy of which is attached hereto as Exhibit "B", Seller is required by practical considerations to defer development of Remainder Parcel 2 and Remainder Parcel 3¹ of the RWK Subdivision Plat Amended (Lot 1 of said subdivision being the property under contract between Seller and Kraftmaid) until sufficient water pressure is available to said "Remainder Parcels". Buyer hereby acknowledges and accepts such condition as part of the acquisition agreement as to Remainder Parcel 3 and acknowledges that its is bound by the CDA.

¹ The Terms "Remainder Parcel 2" and Remainder Parcel 3" as used in the CDA are referred to as "Parcel "2 and "Parcel 3" in the Subdivision Mylar recorded in the Salt Lake County Recorders Office as RWK SUBDIVISION AMENDED Subdivision Plat #9534417, and may be so referred in other documents salient to this Agreement. Such reference of either designation shall be deemed the same two parcels for the purposes of this Agreement.

2. The CDA requires that the owners of the Remainder Parcels, in developing the same into platted subdivisions, make "Improvements" as defined in the CDA. The "Public Improvements" as used herein and the construction of which is subject to this Agreement, shall include but be limited to improvement of Wells Park Road from approximately 6400 West to 6600 West, i.e. that part of Wells Park Road that bisects Parcel 2 and Parcel 3 on the RWK Subdivision Amended Plat Map together with the appropriate underground utility stubs and public improvements for the 6400 West intersection. The CDA further provides that "Developer shall prepare and submit for the City's review, construction drawings which shall be prepared in accordance with City ordinances and standards in effect at the time of further subdivision or development approval. Construction shall not begin until such construction drawings are approved by the City Engineer (the approved construction drawings shall be referred to hereafter as "Approved Plans"). Developer shall ensure that such construction drawings are timely completed in order to obtain City approval and begin construction within one year after sufficient water pressure is available to serve Remainder Parcel 2 and Remainder Parcel 3. Buyer and their assignees agree to shall be bound to these terms and conditions, as well as all other terms and conditions of the CDA applicable to acquisition and development of Remainder Parcel 2 and Remainder Parcel 3.
3. **Undertaking of Construction and Allocation of Cost of the Improvements.** With respect to constructing the "Public Improvements" as above defined, as they relate to improvement of Wells Park Road from approximately 6400 West to 6600 West it is agreed that whether Seller or its assignee(s) of the Remainder Parcel 2 or by Buyer or its assignee(s) of the Remainder Parcel 3 : a) the cost thereof shall be shared equally between the owners of Remainder Parcel 2 and Remainder Parcel 3; b) whichever of the parties or their assigns assumes the roll of "Developer" in making or causing the Public Improvements to be constructed, in determining the proportionate share of cost allocated between Remainder Parcel 2 development and Remainder Parcel 3 development, such allocation shall be at actual documented cost of said improvements made by a third party contractor without inclusion of management or supervisory costs incurred by Seller or Buyer or their respective assigns or any affiliate thereof.
4. **Other Obligations of the Parties under the CDA** . Notwithstanding the fact that this Agreement is primarily for the cost sharing of the Public Improvements as that term is defined herein, it is agreed and intended that Buyer and Seller and their respective assigns shall all be obligated and subject to all the terms and conditions of the CDA, including but not limited to obligations of making the other Improvements as identified in the CDA which are not the subject of the cost sharing provisions of this Agreement, including constructing roads and improvements that lie within their respective Parcel for 6400 West from approximately 9500 South to 10200 South, and road and improvements to the north side of 10200 South from approximately 6500 West to 6600 West.
5. **Payment of Improvement Costs - Lien** The Developer party or the assignee thereof who takes the responsibility of causing the Public Improvements to be made, including hiring of contractors to perform such work, shall submit to the other party a notice in writing of (a) the completion of such improvements, which completion shall be evidenced by

written acceptance thereof by the City and that the warranty period as to such improvements has commenced, and (b) the total and allocated cost thereof in conformance with this Agreement. Payment of the allocated cost by each party shall be made in full within 60 days of said notice. If payment in full is not made within said 60 day period: a) The unpaid amount shall accrue interest at the rate of 1.5% per month in favor of the paying party until paid in full, both before and after judgment, b) the paying party shall be entitled to a lien on said nonpaying parties Parcel, in the amount of said unpaid amount, and upon accruing interest, costs and attorneys fees incurred in collection of said amount. Such lien may, at the option of the paying party, be foreclosed as a Trust Deed pursuant to §§71-1-19 et seq. Utah Code Anno., with Roy B. Moore, attorney at law as Trustee, with the paying party as Beneficiary and the nonpaying party as the Trustor, with said Trustor hereby conveying its respective parcel in trust for the purpose thereof. In the alternative, said lien may be foreclose in any other manner at law or in equity allowed under the laws of the state of Utah.

6. **Obligations Run with Land**. The obligations and benefits of this Agreement shall run with and be a servitude on (Remainder) Parcel 2 and (Remainder) Parcel 3 of said property as shown on the RWK Subdivision Plat Amended as recorded with the Salt Lake County, Utah Recorder's Office as Plat No. #9534417 and upon all assignees of Buyer and Seller of said property.
7. **Recording and Notice of Release** . This Agreement shall be recorded in the Salt Lake County, Utah Recorder's Office. Upon completion and payment of the Public Improvements the parties shall execute and record a Notice of Completion and Payment so as to remove the effect of said recording as a lien on the property.
8. **Attorneys' Fees**. If any Party brings or commences a legal proceeding to enforce any of the terms of this Agreement, the prevailing Party in such action shall have the right to recover reasonable attorneys' fees and costs from the other Party or Parties, to be fixed by the court in such action. The term "legal proceedings" as used above shall include appeals from a lower court judgment as well as proceedings in the Federal Bankruptcy Court, whether or not they are adversary proceedings or contested matters. The term "prevailing Party" as used in the context of proceedings in any court other than the Federal Bankruptcy Court shall mean the Party that prevails in obtaining a remedy or relief which most nearly reflects the remedy or relief which such Party sought.
9. **Notices**. All notices expressly provided hereunder to be given shall be in writing and shall be: (i) hand-delivered, effective upon receipt, or (ii) sent by United States Express Mail or by private overnight courier, effective upon receipt, or (iii) served by certified mail or (iv) by verifiable facsimile transmission (fax). Any such notice or demand served by certified mail, return receipt requested, shall be deposited in the United States mail, with postage thereon fully prepaid and addressed to the party so to be served at its address above stated or at such other address of which said party shall have theretofore notified in writing, as provided above, the party giving such notice. Service of any such notice or demand so made shall be deemed effective on the day of actual delivery as shown by the addressee's return receipt or the expiration of three (3) business days after the date of mailing, which

ever is the earlier in time. Notices to be served hereunder shall be addressed to the appropriate address set forth in the first paragraph of this Agreement , or at such other place as the party may from time to time designate in writing by ten (10) days prior written notice thereof to the addresses herein above first set forth.

10. **Indemnifications.**

- a. Seller hereby agrees to indemnify and hold Buyer harmless from and against any and all liabilities, obligations or other claims that may arise, including, but not limited to, reasonable attorney fees and court costs, as a result of a breach of this Agreement by Seller
- b. Buyer hereby agrees to indemnify and hold Seller harmless from and against any and all liabilities, obligations or other claims that may arise, including, but not limited to, reasonable attorney fees and court costs, as a result of a breach of this Agreement by Buyer.

11. **Captions.** Captions in this Agreement are for convenience only and are not intended to affect any provisions of this Agreement.

12. **Entire Agreement.** This Agreement contains the entire agreement among the parties hereto related to the obligations under the CDA and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, with respect to the subject matter hereof are merged herein and supplement the obligations of the Parties hereto contained in the Purchase and Sale Agreement dated January 5, 2005, as modified April 27, 2005.

13. **Warranties.** The parties warrant and represent that they have had an opportunity to consult, and have, in fact, consulted, legal counsel prior to the execution of this Agreement and execute this Agreement with full knowledge of its meaning and effect. The parties further agree that no representations, warranties, agreements or covenants have been made with regard to this Agreement, no party is relying upon any representation, warranty, agreement or covenant not set forth herein. Each of the parties represents and warrants to the other that it has the authority to enter into this Agreement on behalf of the parties they represent. The representation, warranties, covenants, agreements and indemnities set forth in this Agreement shall remain in full force and effect after the execution and delivery of this Agreement and the delivery of all instruments and documents to be delivered pursuant hereto.

14. **Waiver.** No claim arising out of a breach of this Agreement can be discharged in full, or in part, by a waiver or renunciation of a claim or right, unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. Moreover, the failure of a party to this Agreement to exercise any right or remedy provided by the agreement or by law shall not be a waiver of any obligation or right of the parties, or of any similar default, nor shall it constitute a modification of this Agreement.

15. **Amendment.** No modification, waiver, amendment, discharge or change of this

Agreement shall be valid unless the same is in writing and signed by the party to be charged.

16. **Remedies.** The parties may take any action in law or equity required to enforce their rights under this Agreement.
17. **Successions.** Subject to any and all restrictive provisions hereinabove set forth, this Agreement shall bind and inure to the benefit of and be enforceable by the parties hereto, their respective heirs, administrators, executors, successors and assigns.
18. **Third Parties.** Except as is otherwise provided for herein, each of the parties understands, acknowledges and agrees that no rights or interests whatsoever are given by this Agreement to a party not a party of this Agreement.
19. **Governing Law.** Irrespective of its place of execution or performance, this Agreement shall be construed and enforced in accordance with the laws of the State of Utah.
20. **Counterparts.** This Agreement may be executed in counterparts each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.
21. **Time.** For purposes of this Agreement, time is of the essence.
22. **Further Documents.** Each party hereto agrees to execute, acknowledge and deliver or cause to be executed, acknowledged and delivered any and all documents or instruments reasonably requested by any other party in order to complete the transactions contemplated hereby and to effectuate the terms, conditions, covenants, provisions, intents and purposes of this Agreement.
23. **Drafting Presumptions.** Each of the parties understands, acknowledges and agrees that each of the parties hereto has contributed to the drafting of this Agreement, and no provision hereof shall be construed against any party hereto as being the draftsman thereof. This Agreement shall therefore be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted. If any words or phrases in this Agreement shall have been stricken out or otherwise eliminated, whether or not any other words or phrases have been added, this Agreement shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included in this Agreement and no implication or inference shall be drawn from the fact that said words or phrases were so stricken out or otherwise eliminated.
24. **Number and Gender.** All terms and words used in this Agreement, regardless of the number or gender in which they are used, shall be deemed to include any other number or any other gender as the context may require.
25. **Document to be Recorded** This Agreement shall be recorded in the Salt Lake County

Recorders Office, State of Utah.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

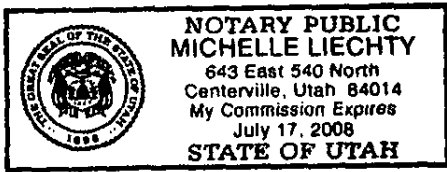
SELLER:

RWK Investments, LLC

[Signature] MGR Date 11-17-05
Robert W. Kelez, Manager

STATE OF UTAH,)
: ss.
COUNTY OF SALT LAKE)

On the 17th day of November, 2005, personally appeared before me ROBERT W. KELEZ, who signed the foregoing instrument, and he acknowledged to me that he is an authorized member of RKW INVESTMENTS, LLC, a Utah limited liability company, and that he executed the same on behalf of said limited liability company by authority of a resolution of the members or pursuant to its Operating Agreement.



[Signature]
NOTARY PUBLIC

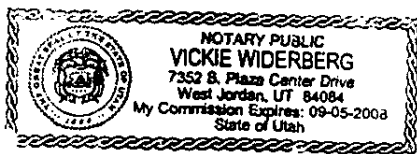
BUYER:

HEP DEVELOPMENT, LLC

By [Signature] Date _____
Manager/Member

STATE OF UTAH,)
: ss.
COUNTY OF SALT LAKE)

On the 17 day of November, 2005, personally appeared before me _____, who signed the foregoing instrument, and he acknowledged to me that he is an authorized member of HEP DEVELOPMENT, LLC, a Utah limited liability company, and that he executed the same on behalf of said limited liability company by authority of a resolution of the members or pursuant to its Operating Agreement.



[Signature]
NOTARY PUBLIC

9512890

PLEASE RETURN TO:
Melanie Briggs
City Recorder
8000 S. Redwood Rd.
West Jordan, UT 84088

DEVELOPMENT AGREEMENT

~~9512890~~
~~10/05/2005 11:47 AM 40-00~~
~~Book 9198 Pg 8166-8176~~
~~GARY W. OTT~~
~~RECORDER, SALT LAKE COUNTY, UTAH~~
~~WEST JORDAN CITY~~
~~8000 S REDWOOD RD~~
~~WEST JORDAN UT 84088~~
~~BY: SEM. DEPUTY WI 11 P.~~
West Jordan
UT 84088

Name of Developer: RWK Investments, LLC
a(n) Utah Limited Liability Company (corporation, partnership, individual),
(State) (Type of Entity)

Address: 7847 South Pheasant Wood Drive, Sandy, UT 84093

Phone: (801) 580-3003, Fax: (801) 942-4851;

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of this 27th day of September, 2005, by and between the CITY OF WEST JORDAN, a Utah municipal corporation (the "City"), and RWK Investments, LLC ("Developer").

RECITALS

200-200-K2-11-92, 200-100-15E-11-92, 200-002-01-92

WHEREAS, Developer desires to subdivide property in the City of West Jordan, the boundary of which is described on the plat entitled "RWK Subdivision" (the "Property") for the purpose of selling or exchanging, or offering for sale or exchange, part(s) of a larger tract or parcel of land; and

WHEREAS, in order to lawfully sell or exchange, or offer for sale or exchange, such part(s) of the Property, Developer is required to first obtain subdivision approval from the City, and for such purpose, has submitted a subdivision application, plat and other required information for the RWK Subdivision; and

WHEREAS, the proposed RWK Subdivision consists of three separate parcels shown on the plat as: Lot 1, Remainder Parcel 2, and Remainder Parcel 3; and

WHEREAS, Remainder Parcel 2 and Remainder Parcel 3 (each a "Remainder Parcel," and collectively referred to as the "Remainder Parcels") are not being developed at this time due to the lack of sufficient water pressure available to the Remainder Parcels; and

WHEREAS, the City and Developer (collectively referred to herein as the "Parties") anticipate future construction by a third party of a water tank that will supply adequate water pressure to serve the Remainder Parcels; and

WHEREAS, the Parties have determined and agreed that each Remainder Parcel will be further subdivided prior to its development, in accordance with City ordinances and standards in effect at the time of subdivision or development approval for the Remainder Parcel; and

WHEREAS, prior to the City's final approval of the RWK Subdivision plat, the Parties have agreed to enter into this Development Agreement to set forth the conditions of future subdivision and development of the Remainder Parcels, particularly with respect to the construction of public improvements which must be designed, approved by the West Jordan City Engineer (the "City Engineer"), and guaranteed prior to future subdivision or development approval for Remainder

BK 9198 PG 8166

BK 9233 PG 1537

EXHIBIT "B"

Parcel 2 and Remainder Parcel 3;

NOW, THEREFORE, in consideration of the foregoing recitals and the following mutual promises, the parties agree to the following:

TERMS

I. PROJECT DESCRIPTION.

A. Project Name: RWK Subdivision.

B. Project Location: approximately 6400 West to 6600 West and 9500 South to 10200 South.

C. Description of Improvements:

The Improvements are: 1) those specified in the final plat for the above named project; 2) those described generally herein; and 3) those specified in the approved construction drawings which shall be prepared in accordance with City ordinances and standards and approved by the City Engineer prior to future subdivision or development approval for Remainder Parcel 2 and Remainder Parcel 3. They are referred to collectively herein as the "Improvements." Improvements may include some or all of the following: public improvements, private improvements, common area and landscaping. Public improvements shall include, but shall not be limited to: improvement of Wells Park Road from approximately 6400 West to 6600 West, improvement of 6400 West from approximately 9500 South to 10200 South, and improvements to the north side of 10200 South from approximately 6500 West to 6600 West.

II. DEDICATION OF RIGHT-OF-WAY AND PROTECTION STRIPS.

A. West Jordan Municipal Code. Developer is required, as a condition of future subdivision or development approval of Remainder Parcel 2 and Remainder Parcel 3, in accordance with the terms of this Agreement, to dedicate right-of-way and improvements for streets and utilities identified in the City's master plan within such Remainder Parcel. These include, at a minimum: 1) Wells Park Road from approximately 6400 West to 6600 West; 2) 6400 West from approximately 9500 South to 10200 South; and 3) the north side of 10200 South from approximately 6500 West to 6600 West.

B. Plat Dedication. By and through the plat for RWK Subdivision, Developer shall, at Developer's sole expense, dedicate the required right-of-way for Wells Park Road and the north side of 10200 South. The dedication of right-of-way shall be in accordance with City ordinances and standards, and the owner's dedication shall be in a form acceptable to the City Attorney. The City shall not be obligated to construct or install street or utility improvements within the dedicated right-of-way for Wells Park Road or 10200 South; this shall remain Developer's obligation as set forth in Article II, subparagraph A.

C. Protection Strips. Developer shall, at Developer's sole expense, dedicate two protection strips to be held by the City, not as right-of-way, for the purpose of ensuring improvement of Wells Park Road as a condition of subdivision or development approval for Remainder Parcel 2

Development Agreement
RWK Subdivision
Page 3 of 9

and Remainder Parcel 3. The release of such protection strips shall be as set forth in this Agreement.

D. Future Dedication Required. Prior to and as a condition of subdivision or development approval for Remainder Parcel 2 and Remainder Parcel 3, Developer shall, at Developer's sole expense, dedicate by warranty deed, right-of-way for the portion of 6400 West within the respective Remainder Parcel. The dedicated 6400 West right-of-way shall extend from the north boundary line to the south boundary line of the respective Remainder Parcel and shall be: 1) not less than 66 feet in width; 2) located in such a manner as to align with adjoining sections of 6400 West at the north boundary and the south boundary of the Remainder Parcel; 3) designed and located so as to meet the City's master plan; 4) designed according to the City's ordinances and standards in effect at the time of subdivision or development approval; and 5) approved by the City Engineer. The exact location of the 6400 West right-of-way from 9500 South to 10200 South is undetermined at this time due to the offset alignment through the Property, which alignment cannot be finally determined until the street design is complete. Developer shall not be entitled to reimbursement for the 66-foot right-of-way, which is an on-site project improvement, necessary to service the Remainder Parcel.

E. Run with the Land. The terms of this Agreement, including but not limited to this article, are intended to run with and be a burden on Remainder Parcel 2 and Remainder Parcel 3 as identified on the RWK Subdivision plat.

III. DEVELOPER'S CONSTRUCTION OF THE IMPROVEMENTS.

A. Required Improvements. Developer shall be required, at Developer's sole expense, to construct and install all street and utility improvements identified on the City's master plan and located within the boundaries of the Remainder Parcel for which subdivision or development approval is sought. Developer shall not be entitled to reimbursement from impact fees or any other source whatsoever for Improvements, unless and only to the extent that reimbursement is available under the City ordinances in effect at the time of subdivision or development approval for the Remainder Parcel. In addition to other improvements required by the City ordinances and standards in effect at the time of subdivision approval for the Remainder Parcels, the Improvements that Developer shall be solely responsible and liable to construct and install shall include master plan street and utility improvements within the following rights-of-way: 1) Wells Park Road from approximately 6400 West to 6600 West, 2) 6400 West from approximately 9500 South to 10200 South, and 3) the north side of 10200 South from approximately 6500 West to 6600 West.

B. Approved Plans. Developer shall prepare and submit for the City's review, construction drawings which shall be prepared in accordance with City ordinances and standards in effect at the time of further subdivision or development approval. Construction shall not begin until such construction drawings are approved by the City Engineer (the approved construction drawings shall be referred to hereafter as "Approved Plans"). Developer shall ensure that such construction drawings are timely completed in order to obtain City approval and begin construction within one year after sufficient water pressure is available to serve Remainder Parcel 2 and Remainder Parcel 3.

Development Agreement
RWK Subdivision
Page 4 of 9

C. Construction Standards. The Improvements shall be constructed in compliance with: the Approved Plans; all applicable federal, state and local laws and regulations; and the City of West Jordan Public Improvement Standards, Specifications, and Plans.

IV. FEES.

A. Fees associated with subdivision or development of the Remainder Parcels shall be in accordance with City ordinances and standards at the time of such subdivision or development approval.

V. COMMENCEMENT AND COMPLETION OF CONSTRUCTION.

A. Commencement and Completion Dates. Construction of the Improvements shall be commenced within one year and completed within three years after sufficient water pressure is available. If Developer fails to commence/complete construction of the Improvements within the time period set forth herein for commencement/completion, the City may notify Developer that Developer will have 60 days to commence/complete the Improvements. If Developer fails to commence/complete the Improvements within the allotted time, City, in its discretion, may complete the construction of the Improvements. The City may recover the full cost and expense of such completion from Developer's Security Device (defined hereafter) or, if not recovered therefrom, from Developer personally.

B. Compliance with City Ordinances and Standards. Developer's construction and installation of Improvements for Remainder Parcel 2 and Remainder Parcel 3 shall comply with all applicable laws, ordinances, rules, regulations and standards in effect at the time of subdivision or development approval for the respective Remainder Parcel.

VI. COMMENCEMENT/COMPLETION EXTENSION.

A. Notification to City. If for any reason Developer determines that the Improvements will not be commenced/completed within the time period specified in this Agreement, Developer shall promptly notify the City of the delay, the reasons therefore, and the anticipated completion date.

B. Extension Request. Developer may request that the City extend the time, but such a request shall not affect City's right to pursue any remedy available at law or by the terms of this Agreement based on Developer's failure to commence/complete the Improvements according to the time periods set forth herein.

C. Grant or Denial of Extension. The City, in its sole discretion, may grant or deny Developer's request for an extension. If the extension is denied, the City may, at its sole discretion, pursue any remedy available at law or by the terms of this Agreement based on Developer's failure to commence/complete the Improvements within the required time periods. If the extension is granted, all of the terms of this Agreement shall remain in full force and effect except as modified by the new completion date.

D. Remedies Non-Exclusive. The City's extension of the completion date under this Article

Development Agreement
RWK Subdivision
Page 5 of 9

shall not preclude the City from exercising any rights or remedies available to the City pursuant to this Agreement.

VII. IMPROVEMENT GUARANTEE.

A. General. Prior to development of Remainder Parcel 2 and Remainder Parcel 3, Developer shall submit a subdivision application and comply with the laws, ordinances, standards and requirements for subdivision approval that are in effect at that time. Prior to recording the approved subdivision plat, Developer shall: pay all fees; enter into a bond agreement and reimbursement agreement, as required; post an improvement guarantee; comply with all conditions prerequisite to recordation.

B. Form of Improvement Guarantee. Prior to recordation of a plat for Remainder Parcel 2 and Remainder Parcel 3, Developer shall file with the City Engineer an improvement guarantee, in a form acceptable to the City Attorney, which secures the performance of Developer's obligations to construct and install Improvements and comply with ordinances and standards of the City.

C. Replacement of Improvement Guarantee. With the consent of the City Attorney, Developer may replace an improvement guarantee. At the request of Developer, the City may, at its sole discretion, accept a replacement improvement guarantee of a type and form permitted by the West Jordan Municipal Code and approved by City (the "Replacement Guarantee"). If a Replacement Guarantee is accepted, City shall release the improvement guarantee for which the Replacement Guarantee was submitted. Thereafter, the person providing the Replacement Guarantee shall be responsible for any substandard or defective Improvements if the proceeds of said Replacement Guarantee are inadequate to cover any such Improvements.

D. Amount of Improvement Guarantee. The amount of the improvement guarantee shall be not less than one hundred percent of the estimated cost of the Improvements. The estimated cost of the Improvements shall be prepared by the City Engineer.

E. No Third Party Beneficiaries to Performance Improvement Guarantee. Neither this nor any other provision requiring an improvement guarantee shall be construed to create any rights in any third party claimant as against the City for construction of the Improvements.

F. Improvement Guarantee Reductions, Retainage and Releases. Reductions, retainage and release of the improvement guarantee shall be in accordance with the terms of the improvement guarantee and the City ordinances and standards in effect at the time of subdivision or development approval for the Remainder Parcel for which the improvement guarantee was posted.

VIII. RELEASE OF PROTECTION STRIPS.

A. General. Two protection strips are shown on the RWK Subdivision plat, one along the north side and the other along the south side of Wells Park Road from approximately 6400 West to 6600 West. The protection strips shall be held by the City for the following purposes: 1) to ensure construction and installation of street and utility improvements to Wells Park Road from

Development Agreement
RWK Subdivision
Page 6 of 9

6400 West to 6600 West; and 2) to distribute costs among and recover costs from benefiting properties related to off-site improvements to Wells Park Road.

B. Improvements to Wells Park Road. Developer shall, as a condition of subdivision or development approval for Remainder Parcel 2 or Remainder Parcel 3, whichever occurs earlier, construct and install all required street and utility improvements for Wells Park Road, at Developer's sole expense. The improvements for Wells Park Road shall be installed within the right-of-way dedicated by the RWK Subdivision plat.

C. Potential Reimbursement Agreement. Prior to receiving subdivision or development approval for Remainder Parcel 2 or Remainder Parcel 3, whichever occurs earlier, Developer may request to enter into a reimbursement agreement stating the terms of reimbursement requested from the other property owner(s) adjacent to Wells Park Road (the "Benefited Properties"). The City shall consider such request in accordance with applicable City ordinances in effect at the time of such request.

1. If no such reimbursement agreement is executed by Developer and City prior to final subdivision or development approval, City shall release both protection strips after construction and installation of the street and utility improvements in Wells Park Road from 6400 West to 6600 West is complete and City has accepted such improvements.

2. If Developer and city enter into a reimbursement agreement, City shall release protection strips or portions thereof in accordance with the terms of the reimbursement agreement, after construction and installation of the street and utility improvements in Wells Park Road from 6400 West to 6600 West is complete and City has accepted such improvements.

D. Form of Release. When required/permitted by the terms of this Agreement, a future reimbursement agreement as discussed above, local ordinances or as otherwise required by law, City shall release the protection strip by Quitclaim Deed conveying such protection strip to the owner of the immediately adjacent property.

IX. INDEMNIFICATION AND RISK.

A. Developer to Indemnify the City. Developer shall, at all times, protect, indemnify, save harmless and defend the City and its agents, employees, officers and elected officials from and against any and all claims, demands, judgments, expense, and all other damages of every kind and nature made, rendered, or incurred by or in behalf of any person or persons whomsoever, including the parties hereto and their employees, which may arise out of any act or failure to act, work or other activity related in any way to the Project, by Developer, Developer's agents, employees, subcontractors, or suppliers in the performance and execution of the work contemplated by this Agreement.

B. Builder's Risk of Loss. Developer assumes the risk of loss for any damage or loss to the Improvements by any means or occurrence until final acceptance of the Improvements as evidenced by resolution of the City Council.

X. INSURANCE.

A. Required policies of insurance shall be provided in accordance with the City ordinances and standards in effect at the time of subdivision or development approval.

XI. RUN WITH THE LAND.

A. The terms of this Agreement are intended to run with and be a burden on Remainder Parcel 2 and Remainder Parcel 3 as identified on the RWK Subdivision plat.

XII. GIVING NOTICE.

A. General. Notices provided for herein shall be sufficient if sent by registered or certified mail, postage prepaid, by hand-delivery, or by overnight delivery service for which a delivery receipt is required.

B. Effectiveness. Notices sent as provided in sub-paragraph "A" above shall be effective on the date on which such notice was sent.

C. Facsimile. Notice may be sent by facsimile. Facsimile notice shall be effective on the date of transmission provided that a confirmation establishing the successful transmission of the notice is sent by first-class mail, postage prepaid, along with a copy of the notice transmitted, no later than twenty-four hours after the facsimile notice is transmitted.

D. Short Notices. If any notice requires a period of less than seven days for response, the notice shall be sent by facsimile.

E. Notice to Provider of Improvement Guarantee. A provider of a required improvement guarantee shall receive notice at the business address shown on the improvement guarantee.

XIII. COMPUTATION OF TIME.

A. General Rule. When any period of time is referred to in this Agreement by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on Saturday, Sunday or a legal holiday in the State of Utah, such day will be omitted from the computation.

XIV. MISCELLANEOUS.

A. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah. Any court action arising from this Agreement shall be brought in an appropriate federal or state court with appropriate jurisdiction in the Salt Lake County, State of Utah.

B. No Third Party Beneficiaries. The provisions of this Agreement are solely between the City and the Developer and shall not create any rights or claims in any third parties.

Development Agreement
RWK Subdivision
Page 8 of 9

C. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and may not be modified except in a writing signed by both parties.

D. Assignment. The obligations of Article II, subparagraphs B and C shall not be assignable. The remainder of this Agreement may be assigned upon receipt of written approval from the City. At a minimum, City acceptance of such proposed assignment shall require: 1) that the party to whom assignment is sought (the "Assignee") be an owner, developer or applicant for subdivision/development approval for Remainder Parcel 2 or Remainder Parcel 3; 2) that the Assignee accepts all obligations and liability of this Agreement with respect to the Remainder Parcel which Assignee owns, is developing or has applied for subdivision/development approval; and 3) that this Agreement remain in full force and effect as to the other Remainder Parcel until such time as assignment of the obligations and liability for the other Remainder Parcel has been accepted, in writing, by the City.

XV. EXECUTION.

A. Effective Date. This Agreement shall be deemed effective as of the day and year first written above.

B. Developer's Subscription and Acknowledgement.

- 1. Name and type of organization: RWK INVESTMENTS LLC
(corporation, partnership, limited liability company, individual, etc.)
- 2. Developer's signature: [Signature] mgr.
- 3. Please print name here: ROBERT W KELEZ
- 4. Title: MANAGER
- 5. Business Entity Acknowledgement:

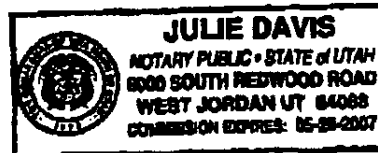
STATE OF UTAH)

: ss.

COUNTY OF Salt Lake

The foregoing instrument was acknowledged before me this 23 day of September, 2005 by Robert W. Kelez, the Manager of RWK Investments, LLC, a Limited Liability Company

[Signature]
NOTARY PUBLIC
residing in: Salt Lake County, Utah



Development Agreement
RWK Subdivision
Page 9 of 9

6. Individual Acknowledgement:

STATE OF UTAH)
: ss.
COUNTY OF _____)

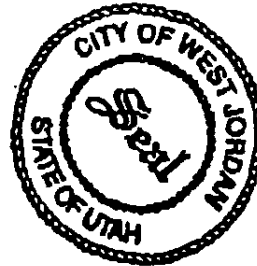
The foregoing instrument was acknowledged before me this _____, day of _____, 2005
by _____, an individual.

NOTARY PUBLIC
residing in: _____

7. Corporate Authority: At the request of the City, evidence satisfactory to the City shall be submitted which shows the person executing this Agreement has the required authority to execute this Agreement.

C. CITY'S SUBSCRIPTION AND ATTESTATION.

- 1. Approval as to form: _____
(City's attorney)
- 2. City's signature: Bryan D. Holladay
- 4. Name and title: Mayor Bryan D. Holladay
- 5. Title: Mayor
- 6. Attest and Countersign: Melanie [Signature]
(Signature of City Recorder or designee)



APPROVED AS TO LEGAL FORM
West Jordan City Attorney

[Signature] Date: 9-26-05

THE CITY OF WEST JORDAN, UTAH
A Municipal Corporation

RESOLUTION NO. 05-161

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A DEVELOPMENT AGREEMENT WITH ROBERT W. KELEZ

Whereas, the City Council of the City of West Jordan has reviewed an Agreement between the City of West Jordan and Robert W. Kelez, (a copy of which is attached) to provide assurance of future dedication of right-of-way and installation of public improvements; and

Whereas, the City Council of the City of West Jordan desires that the aforementioned Agreement be executed by the Mayor and Robert W. Kelez after approval as to legal form by the City Attorney; and

Whereas, the Mayor is authorized to execute this agreement pursuant to Utah Code Annotated 10-3-1223.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST JORDAN, UTAH, THAT:

Section 1. After approval as to legal form by the City Attorney, the Mayor is hereby authorized and directed to execute three original copies of the Development Agreement between the City of West Jordan and Robert W. Kelez.

Section 2. This Resolution shall take effect immediately upon passage.

Adopted by the City Council of West Jordan, Utah, this 27th day of September, 2005.

CITY OF WEST JORDAN

ATTEST:

Melanie Briggs
MELANIE BRIGGS
City Recorder

By: *Bryan D. Holladay*
Mayor Bryan D. Holladay



-BK-9198-PG-8475

Res 05-161

Voting by the City Council

"AYE"

"NAY"

- Rob Bennett
- Kathy Hilton
- Mike Kellermeyer
- Stuart Richardson
- Kim V. Rolfe
- Lyle C. Summers
- Mayor Bryan D. Holladay

✓	_____
✓	_____
✓	_____
✓	_____
✓	_____
✓	_____
✓	_____