

C 2010-18
WEBER COUNTY



W2456191

**SUBDIVISION IMPROVEMENT
AGREEMENT EXTENSION**

EH 2456191 PG 1 OF 12
ERNEST D ROWLEY, WEBER COUNTY RECORDER
28-JAN-10 1021 AM FEE \$.00 DEP JPM
REC FOR: WEBER COUNTY PLANNING

- 1. **Parties:** The parties to this Subdivision Improvement Agreement Extension ("the Agreement") are Fairways At Wolf Creek LLC ("the Developer") and Weber County Corp. ("the County").
- 2. **Effective Date:** The Effective Date of this Agreement shall be the approval date of the Agreement when granted by the County Commission ("the Commission").

RECITALS

WHEREAS, the Developer has requested an extension to an original Weber County Subdivision Improvement Agreement, recorded in the Office of the Weber County Recorder as entry # 2194115 and pertaining to property within the unincorporated area of Weber County, known as The Fairways At Wolf Creek PRUD Phase 3 (the "Subdivision"), which property is more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the County seeks to protect the health, safety and general welfare of the residents by requiring the completion of various improvements in the Subdivision and thereby to limit the harmful effects of substandard subdivisions, including premature subdivision which leaves property undeveloped and unproductive; and

WHEREAS, the purpose of this Agreement extension is to provide reasonable and practical flexibility to the project and protect the County from the cost of completing subdivision improvements itself and is not executed for the benefit of material, men, laborers, or others providing work, services or material to the Subdivision or for the benefit of lot or home buyers in the Subdivision; and

WHEREAS, the mutual promises, covenants, and obligations contained in this Agreement are authorized by state law and the County's Subdivision Ordinance Title 26-4-1 et seq;

THEREFORE, the Parties hereby agree as follows:

DEVELOPER'S OBLIGATIONS

- 3. **Improvements:** The Developer will construct and install, at his own expense, those on-site and off-site subdivision improvements listed on Exhibit B attached hereto and incorporated herein by this reference ("the Improvements"). The Developer's obligation to complete the Improvements arose upon final plat approval by the County, will be independent of any obligations of the County contained herein and shall not be conditioned on the commencement of construction in the development or sale of any lots or improvements within the development.

4. **Security:** To secure the performance of his obligations hereunder, the Developer shall deposit with the County on or prior to the effective date, an Escrow Certificate issued by the Weber County Engineer in the amount of **\$21,867.00**. The Escrow Certificate shall be payable at sight to the County and shall bear an expiration date of **24** months after the Effective Date of this Agreement. The Escrow Certificate shall be payable to the County at any time upon presentation of (i) an affidavit executed by an authorized County official stating that the Developer is in default under this Agreement; and (ii) the original Escrow Certificate. An Escrow Certificate shall be substantially similar to Exhibit C attached hereto and incorporated herein by this reference.
5. **Standards:** The Developer shall construct the Improvements according to the Public Works Standards and Technical Specifications as incorporated herein by this reference.
6. **Warranty:** The Developer warrants that the Improvements, each and every one of them, will be free from defects for a period of one year from the date that the County accepts the improvement when completed by the Developer.
7. **Completion Periods:** The Developer shall complete the Improvements within **24** months from the Effective Date of this Agreement.
8. **Compliance with Law:** The Developer shall comply with all relevant laws, ordinances, and regulations in effect at the time of final subdivision plat approval when fulfilling his obligations under this Agreement. When necessary to protect public health, the Developer will be subject to laws, ordinances and regulations that become effective after final plat approval.
9. **Dedication:** The developer shall dedicate to the County or other applicable agency as designated by the County the Improvements listed on Exhibit B attached hereto and incorporated herein by this reference pursuant to the procedure described in Paragraph 13 below.

COUNTY'S OBLIGATIONS

10. **Plat Approval:** The County shall grant final subdivision plat approval to the Subdivision under the terms and conditions previously agreed to by the Parties if those terms and conditions are consistent with all relevant state laws and local ordinances in effect at the time of final plat approval.

11. **Inspection and Certification:** The County shall inspect the Improvements as they are being constructed and, if acceptable to the County Engineer, certify such improvement as being in compliance with the standards and specifications of the County. Such inspection and certification, if appropriate, will occur within 7 days of notice by the Developer that he desires to have the County inspect an improvement. Before obtaining certification of any such improvement, the Developer will present to the County valid lien waivers from all persons providing materials or performing work on the improvement for which certification is sought. Certification by the County Engineer does not constitute a waiver by the County of the right to draw funds under the Escrow Certificate on account of defects in or failure of any improvement that is detected or which occurs following such certification.
12. **Notice of Defect:** The County shall provide timely notice to the Developer whenever inspection reveals that an improvement does not conform to the standards and specifications shown on the approved subdivision improvement drawings on file in the Weber County Engineering and Surveyor's Office or is otherwise defective. The Developer will have 30 days from the issuance of such notice to cure or substantially cure the defect. The County may not declare a default under this Agreement during the 30 day cure period on account of any such defect unless it is clear that the Developer does not intend to cure the defect. The Developer will have no right to cure defects in or failure of any improvement found to exist or occurring after the County accepts dedication of the improvement(s).
13. **Acceptance of Dedication:** The County or other applicable agency shall accept the dedication of any validly certified improvement within 30 days of the Developer's offer to dedicate the improvement. The County's or agency's acceptance of dedication is expressly conditioned on the presentation by the Developer of a policy of title insurance, where appropriate, for the benefit of the County showing that the Developer owns the improvement in fee simple and that there are no liens, encumbrances, or other restrictions on the improvement unacceptable to the County in its reasonable judgment. Acceptance of the dedication of any improvement does not constitute a waiver by the County of the right to draw funds under the Escrow Certificate on account of any defect in or failure of the improvement that is detected or which occurs after the acceptance of the dedication. The Improvements must be offered to the County in no more than one dedication per month.
14. **Reduction of Security:** After the acceptance of any improvement, the amount which the County is entitled to draw on the Escrow Certificate may be reduced by an amount equal to 90 percent of the estimated cost of the improvement as shown on Exhibit B. At the request of the Developer, the County will execute a certificate of release verifying the acceptance of the improvement and waiving its right to draw on the Escrow Certificate to the extent of such amount. A Developer in default under this Agreement will have no right to such a certificate. Upon the acceptance of all of the Improvements, the balance that may be drawn under the Escrow Certificate will be available to the County for 90 days after expiration of the Warranty Period.
15. **Use of Proceeds:** The County shall use funds drawn under the Escrow Certificate only for the purposes of completing the Improvements or correcting defects in or failures of the Improvements.

OTHER PROVISION

16. **Events of Default:** The following conditions, occurrences or actions shall constitute a default by the Developer during the Construction Period:
- a. Developer's failure to complete construction of the Improvements within 24 months of the Effective Date of this Agreement;
 - b. Developer's failure to cure the defective construction of any improvement within the applicable cure period;
 - c. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer;
 - d. Foreclosure of any lien against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure.

The County may not declare a default until written notice has been given to the Developer.

17. **Measure of Damages:** The measure of damages for breach of this Agreement shall be the reasonable cost of completing the Improvements. For improvements upon which construction has not begun, the estimated cost of the Improvements as shown on Exhibit B will be prima facie evidence of the minimum cost of completion; however, neither that amount or the amount of the Escrow Certificate establishes the maximum amount of the developer's liability. The County will be entitled to complete all unfinished improvements at the time of default regardless of the extent to which development has taken place in the Subdivision or whether development ever commenced.
18. **County's Rights Upon Default:** When any event of default occurs, the County may draw on the Escrow Certificate to the extent of the face amount of the credit less 90 percent of the estimated cost (as shown on Exhibit B) of all improvements theretofore accepted by the County. The County shall have the right to complete improvements itself or contract with a third party for completion, and the Developer hereby grants to the County, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, maintaining, and repairing such improvements. Alternatively, the County may assign the proceeds of the Escrow Certificate to a subsequent developer (or a lender) who has acquired the Subdivision by purchase, foreclosure or otherwise who will then have the same rights of completion as the County if and only if the subsequent developer (or lender) agrees in writing to complete the unfinished improvements. In addition, the County also may suspend final plat approval during which time the Developer shall have no right to sell, transfer, or otherwise convey lots or homes within the Subdivision without the express written approval of the County or until the Improvements are completed and by the County. These remedies are cumulative in nature except that during the Warranty Period, the County's only remedy shall be to draw funds under the Escrow Certificate.

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19. **Indemnification:** The Developer hereby expressly agrees to indemnify and hold the County harmless from and against all claims, costs and liability of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance of work at the development site and elsewhere pursuant to this Agreement. The Developer further agrees to aid and defend the County in the event that the County is named as a defendant in an action concerning the performance of work pursuant to this Agreement except where such suit is brought by the Developer. The Developer is not an agent or employee of the County.
20. **No Waiver:** No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both County and Developer; nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The County's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by the Developer or the acceptance of any improvement.
21. **Amendment or Modification:** The parties to this Agreement may amend or modify this Agreement only by written instrument executed by the County and by the Developer or his authorized officer. Such amendment or modification ~~with~~ shall be properly notarized before it may be effective.
22. **Attorney's Fees:** Should either party be required to resort to litigation, arbitration, or mediation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, shall be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If the court, arbitrator, or mediator awards relief to both parties, each shall bear its own costs in their entirety.
23. **Vested Rights:** The County does not warrant, by this Agreement, that the Developer is entitled to any other approval(s) required by the County, if any, before the Developer is entitled to commence development of the Subdivision or to transfer ownership of property in the Subdivision.
24. **Third Party Rights:** No person or entity who or which is not a party to this Agreement shall have any right of action under this Agreement, except that if the County does not exercise its rights within 60 days following knowledge of an event of default, a purchaser of a lot or home in the Subdivision may bring an action in mandamus to compel the County to exercise its rights.
25. **Scope:** This Agreement constitutes the entire agreement between the parties and no statement(s), promise(s) or inducement(s) that is/are not contained in this Agreement will be binding on the parties.
26. **Time:** For the purpose of computing the Commencement, Abandonment, and Completion Periods, and time periods for County action, such times in which civil disaster, acts of God, or extreme weather conditions occur or exist shall not be included if such times prevent the Developer or County from performing his/its obligations under the Agreement.

Sub. Imp. Agreement

27. **Severability:** If any part, term or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the part, term, or provision was never part of the Agreement.
28. **Benefits:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the County. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also shall be binding on the heirs, successors, and assigns of the Developer. There is no prohibition on the right of the County to assign its rights under this Agreement. The County shall release the original developer's Escrow Certificate if it accepts new security from any developer or lender who obtains the Property. However, no act of the County will constitute a release of the original developer from this liability under this Agreement.
29. **Notice:** Any notice required or permitted by this Agreement shall be deemed effective when personally delivered in writing or three (3) days after notice is deposited with the U.S Postal Service, postage prepaid, certified, and return receipt requested, and addressed as follows:
- if to Developer (Attn) Russell K. Watts,
(Address) Fairways At Wolf Creek LLC
5200 South Highland Drive # 101
Salt Lake City, Utah 84117
- if to County: Attn: County Engineer
Weber Center
2380 Washington Blvd.
Ogden, UT 84401
30. **Recordation:** Either Developer or County may record a copy of this Agreement in the Clerk and Recorder's Office of Weber County, Utah.
31. **Immunity:** Nothing contained in this Agreement constitutes a waiver of the County's sovereign immunity under any applicable state law.

32. **Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any civil action commenced by either party to this Agreement whether arising out of or relating to the Agreement or Escrow Certificate shall be deemed to be proper only if such action is commenced in District Court for Weber County. The Developer expressly waives his right to bring such action in or to remove such action to any other court whether state or federal.

Dated this 21 day of January, 2010.

 V.P.
Developer

INDIVIDUAL ACKNOWLEDGEMENT

State of Utah)
 SS
County of Weber)


On the _____ day of _____ A.D. 20__

personally appeared before me _____

the signer(s) of the within instrument, who duly acknowledged to me that he/she executed the same.

Notary Public
Residing at: _____, Utah

APPROVED AS TO FORM:


Weber County Attorney

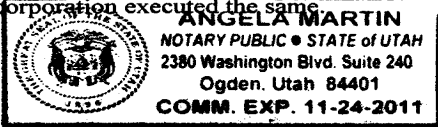
CORPORATE ACKNOWLEDGMENT

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State of Utah)
) SS
County of Weber)

On the 21 day of January A.D. 2010

personally appeared before me Mike Nelson duly sworn, did say that he/she
is the Vice President of Fairways of Wolf Creek LLC the corporation which executed the foregoing instrument,
and that said instrument was signed in behalf of said corporation by authority of a Resolution of its Board of Directors that the
said corporation executed the same



[Signature]
Notary Public
Residing at:

[Signature: Kenneth A. Buschoff]
Chairperson, Weber County Commission

1-26-2010
Date

ATTEST:

[Signature: Fatima Ferrelis]
Weber County Clerk Admin. Assistant

22-262-0001-2019, 0B

Sub. Imp. Agreement

EXHIBIT A: PROPERTY DESCRIPTION OF SUBDIVISION

The Fairways At Wolf Creek PRUD Phase 3

EXHIBIT B: REQUIRED ON & OFF SITE SUBDIVISION IMPROVEMENTS

See Exhibit B

EXHIBIT C: FINANCIAL GUARANTEE

See Exhibit C

Exhibit B

The Fairways @ Wolf Creek Phase 3 (Revised Required Escrow for 2010)

Landscaping \$ 20,000.00 (includes guarantee)

Other Improvement Contingency 1,867.00

TOTAL \$ 21,867.00

ESCROW CERTIFICATE

TO WEBER COUNTY, UTAH:

The undersigned Escrow Agent does hereby certify that it has in its possession and custody, cash in the sum of \$21,867.00 which said sum said Escrow Agent is holding in escrow to guarantee the installation and completion, according to Ordinance, of all on and or off-site improvements, as specified in Exhibit "B" on the following described tracts of land in Weber County, Utah to wit:

The Fairways At Wolf Creek PRUD Phase 3

In the event the funds so provided herein do not pay for and complete in full all of the specified improvements set forth in Exhibit "B" and as contemplated herein, then and in that event, subdivider/developer agrees to forthwith pay to Weber County all additional amounts necessary to so complete such improvements.

Said Escrow Agent hereby covenants and agrees that it will not release said funds to any person, firm or corporation (other than as is hereinafter provided) without the express written consent and direction from said Weber County, Utah, and that if said improvements are not satisfactorily installed and completed according to Ordinance within one month short of two years from the date hereof, that the said Escrow Agent will upon demand deliver said funds to said Weber County, Utah for the sole purpose of making and/or completing all of said improvements, with said County to return to the said Escrow Agent any and all funds which may prove to be in excess of the actual cost to the County to make and/or complete said improvements.

It is understood that the County may, at its sole option, extend said period of two years for such completion of such improvements upon request of the Escrow Agent or the Subdivider, if the County Commission determines that such extension is proper.

It is further understood and agreed that all matters concerning this agreement shall be subject to the pertinent provisions of the ordinances of Weber County, Utah.

DATED this 21st day of January, 2010

WEBER County - CURTIS CHRISTENSEN
Escrow Agent

Curtis Christensen
Signature

Title: County Engineer

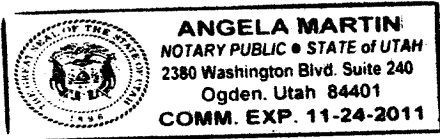
State of Utah)

ss:

County of Weber)

On the 21 day of January, 2010 appeared before me

the signer(s) of the within instrument, who duly acknowledged to me that he/she executed the same.



[Handwritten Signature]

 Notary Public
 Residing at:

APPROVED AS TO FORM:

[Handwritten Signature] 1/21/2010

 Weber County Attorney Date

APPROVED:

[Handwritten Signature] 1-26-2010

 Chairperson, Weber County Commission Date

ATTEST:

by *[Handwritten Signature]*

 Weber County Clerk Admin. Assistant