

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

DEVELOPMENT AGREEMENT

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Book - 9198 Pg - 8166-8176
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
WEST JORDAN CITY
8000 S REDWOOD RD West Jordan
WEST JORDAN UT 84088 UT 84088
BY: SEM, DEPUTY - WI 11 P.

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

26-10-200-002, 26-11-351-001, 26-11-301-002, 26-11-301-003

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

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

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.

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

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

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.

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.

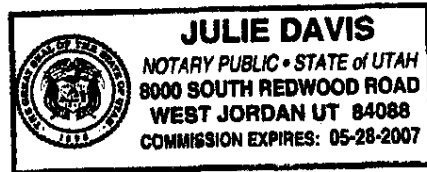
B. Developer's Subscription and Acknowledgement.

- Name and type of organization: RWK INVESTMENTS LLC
(corporation, partnership, limited liability company, individual, etc.)
- Developer's signature: [Signature] MGR.
- Please print name here: ROBERT W KELEZ
- Title: MANAGER
- 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



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.

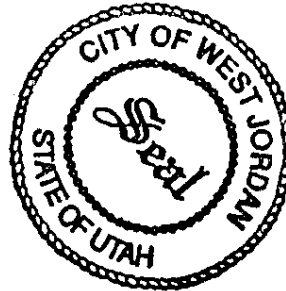
1. Approval as to form: _____
(City's attorney)

2. City's signature: Bryan D. Hoffaday

4. Name and title: Mayor Bryan D. Hoffaday

5. Title: Mayor

6. Attest and Countersign: Melanie [Signature]
(Signature of City Recorder or designee)



APPROVED AS TO LEGAL FORM
West Jordan City Attorney

By: [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.

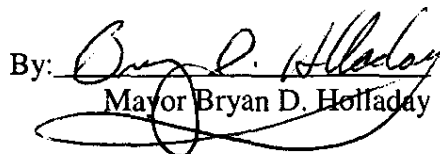
Section 2. This Resolution shall take effect immediately upon passage.

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

CITY OF WEST JORDAN

ATTEST:


MELANIE BRIGGS
City Recorder

By: 
Mayor Bryan D. Holladay



Voting by the City Council

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

"AYE"

"NAY"

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