

# WEBER COUNTY PLANNING DIVISION

## Administrative Review Meeting Agenda

---

**August 28, 2024  
4:00 p.m.**

### **1. Administrative Items**

**1.1 File Number LVG081624** – A request for final approval of the Grove at JDC Ranch Phase 2 (28 lots).

**Planner: Felix Lleverino**

**Adjourn**

---

*The meeting will be held in Public Works Conference Room, in the Weber Center, 2<sup>nd</sup> Floor Suite240, 2380 Washington Blvd, Ogden Utah 84401*

***\*Public comment may not be heard during administrative items. Please contact***

***The Planning Division Project Manager at 801-399-8374 before the meeting if you have questions or comments regarding an item\****

*In compliance with the Americans with Disabilities Act, persons needing auxiliary services for these meetings should call the Weber County Planning Commission at 801-399-8374*

---



# Staff Report to the Weber County Planning Division

Weber County Planning Division

## Synopsis

### Application Information

**Application Request:** File Number LVG081624 – A request for final approval of the Grove at JDC Ranch Phase 2 (28 lots).

**Agenda Date:** Wednesday, August 28, 2024

**Applicant:** Steve Anderson (Nilson Land Development)

### Property Information

**Approximate Address:** 3225 N 2875 W

**Project Area:** 9.6 acres

**Zoning:** R-1-10

**Existing Land Use:** Agricultural

**Proposed Land Use:** Residential

**Parcel ID:** 19-020-0103, 19-020-0105

**Township, Range, Section:** 7N, 2W Section 27

### Adjacent Land use

<b>North:</b> Agricultural	<b>South:</b> Residential
<b>East:</b> Agricultural/Residential	<b>West:</b> Agricultural/ Residential

### Staff Information

**Report Presenter:** Felix Lleverino  
flleverino@co.weber.ut.us  
801-399-8767

**Report Reviewer:** RG

## Applicable Ordinances

- Title 101, Chapter 1 General Provisions, Section 7 Definitions
- Title 104, (Zones) Chapter 12 Single Family Residential Zone R-1-10
- Title 106, Subdivisions

## Background/History

A rezoning of this parcel from A-1 to R-1-10 was approved by the County Commission on September 6<sup>th</sup>, 2022. The rezone includes a Development Agreement that is recorded on title with the entry number 3257495. The planning staff reviewed the development agreement to ensure that the requirements are satisfied.

On February 21, 2023, the Western Weber Planning Commission granted preliminary approval of West Ridge Subdivision phases 2 and 3 (57 lots).

Final approval of The Grove at JDC Ranch Phase 2 was considered by the Weber County Planning Division in a public meeting held on August 28, 2024.

## Summary

The applicant is requesting final approval of The Grove at JDC Ranch Phase 2 (Formerly West Ridge Subdivision) which has a total of 28 single family dwelling lots. The road system within Phase 2 will provide connection to the the Grove Phase 1 to the south and open undevelopment land within Plain City limits to the east. A 10' wide side walk will be built on the west side of 2875 West Street. To provide some open space and pedestrian connections in a east-west direction, the Grove includes three public midblock crossings that are labeled parcels A, B, and C. The open space improvement will be owned and maintained by the JDC community HOA.

## Analysis

General Plan: The Weber County Future Land Use Map indicates that the land is intended for mixed-use residential and commercial. This proposal will provide the single family dwelling development type to this mixed-use residential area.

Zoning: The property is located within the R-1-10 Zone. The purpose of these zones is stated in the LUC §104-12.

*The purpose of the R-1-12, R-1-10 Zone classification is to provide regulated areas for single-family residential use at two different low-density levels.*

Site Development Standards: The minimum lot size is 80 wide and 10,000 sq. ft. in area. All lots within this development meet or exceed the minimum requirement.

Common Area: The planned open space and the public amenities within will be managed and maintained by The Grove at JDC HOA. The creation of the HOA is the developer's responsibility. The HOA document will be reviewed by the Planning Division and the County Attorney's office before it is registered with the State and Recorded.

Flood Zone: This parcel is within an area of minimal flood hazard and determined to be outside the 500-year flood level.

Culinary Water: Bona Vista Water District has provided a capacity assessment letter after the District approved of the improvement plans. Before the District will provide culinary water to Phase 2 the developer must furnish proof of secondary water.

Secondary Water: Weber-Box Elder Conservation District will serve this development with secondary water for outdoor watering purposes. The District's inclusion requirements and the secondary water infrastructure must be installed before building permits are issued.

Sewer Services: Annexation into the Central Weber Sewer Improvement District is complete as of April 18<sup>th</sup>, 2022.

Public Street Connectivity: This development is designed to facilitate efficient street connections to adjacent properties and to provide pedestrian pathways that join together public gathering spaces such as parks and sport fields.

Review Agencies: The Weber County Surveying has approved of The Grove at JDC Ranch with a condition that the developer enter into a Street Monument Improvement Agreement. The County Engineering Department has approved of the final improvement plans and the Subdivision Improvements Guarantee. The Weber County Planning Division recommends approval of Phase 2. The Weber Fire District has posted approval with comments regarding the placement of fire hydrants.

## Staff Recommendations

After the Western Weber Planning Commission forwarded a positive recommendation for final approval to the County Commission, the planning staff recommends final approval of The Grove at JDC Ranch Phase 2 (28 lots).

1. Before the subdivision plat is recorded funds to cover the cost of the remaining subdivision improvements for Phase 2 are secured and the improvements guarantee is complete.
2. The improvements guarantee is recorded.

The following findings are the basis for the staff's recommendations:

1. The proposed subdivision conforms to the Western Weber General Plan.
2. The proposed subdivision complies with the applicable County codes.
3. The subdivision conforms to zoning and subdivision ordinances.

## Exhibits

- A. The Grove at JDC Ranch Phase 2 plat
- B. Improvements Guarantee

## Area Map

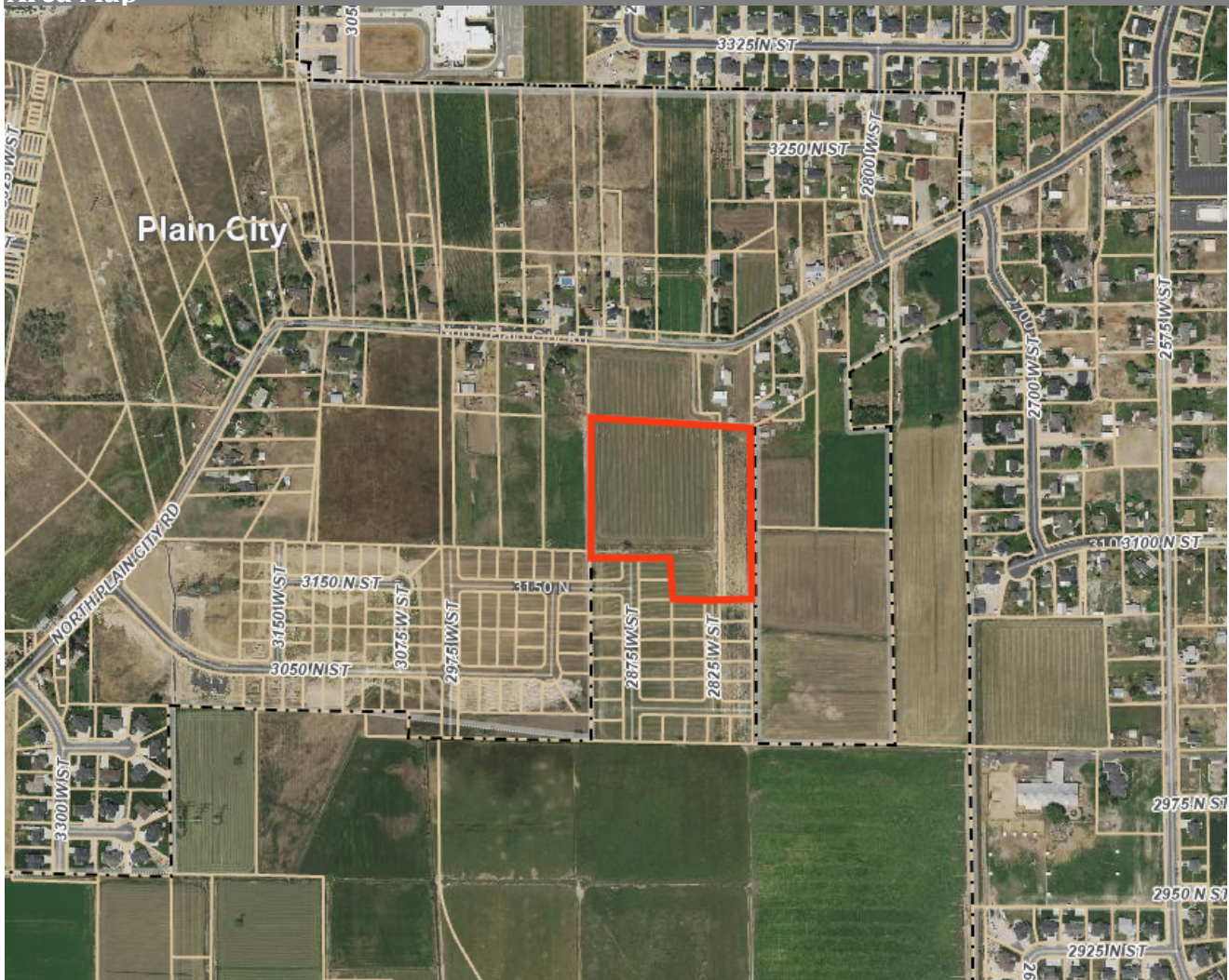


Exhibit A

# THE GROVE AT JDC RANCH SUBDIVISION PHASE 2

PART OF THE NORTHEAST QUARTER OF SECTION 27, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY  
WEBER COUNTY, UTAH  
AUGUST, 2024

NORTHWEST CORNER OF SECTION 27, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY. FOUND 3" WEBER COUNTY SURVEY BRASS CAP MONUMENT IN CONCRETE MARKED "1963" IN GOOD CONDITION. (SEE DETAIL 1)

NORTHEAST CORNER OF SECTION 27, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY. CALCULATED

FOUND 3" WEBER COUNTY SURVEY BRASS CAP WITNESS CORNER MONUMENT IN CONCRETE MARKED "1985" IN GOOD CONDITION (SEE DETAIL 2)



VICINITY MAP  
NOT TO SCALE

**SURVEYOR'S CERTIFICATE**

I, **TREVOR J. HATCH**, DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR IN THE STATE OF UTAH IN ACCORDANCE WITH TITLE 58, CHAPTER 22, PROFESSIONAL ENGINEERS AND LAND SURVEYORS ACT; AND THAT I HAVE COMPLETED A SURVEY OF THE PROPERTY DESCRIBED ON THIS PLAT IN ACCORDANCE WITH SECTION 17-23-17 AND HAVE VERIFIED ALL MEASUREMENTS, AND HAVE PLACED MONUMENTS AS REPRESENTED ON THIS PLAT, AND THAT THIS PLAT OF **THE GROVE AT JDC RANCH SUBDIVISION PHASE 2** IN **WEBER COUNTY, UTAH**, HAS BEEN DRAWN CORRECTLY TO THE DESIGNATED SCALE AND IS A TRUE AND CORRECT REPRESENTATION OF THE HEREIN DESCRIBED LANDS INCLUDED IN SAID SUBDIVISION, BASED UPON DATA COMPILED FROM RECORDS IN THE **WEBER COUNTY** RECORDER'S OFFICE AND FROM SAID SURVEY MADE BY ME ON THE GROUND. I FURTHER CERTIFY THAT THE REQUIREMENTS OF ALL APPLICABLE STATUTES AND ORDINANCES OF **WEBER COUNTY** CONCERNING ZONING REQUIREMENTS REGARDING LOT MEASUREMENTS HAVE BEEN COMPLIED WITH.

SIGNED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

9031945  
UTAH LICENSE NUMBER

**TREVOR J. HATCH**  
PROFESSIONAL LAND SURVEYOR  
STATE OF UTAH

### BASIS OF BEARINGS

THE BASIS OF BEARINGS FOR THIS PLAT IS THE MONUMENT LINE BETWEEN A FOUND WITNESS CORNER BRASS CAP MONUMENT TO THE NORTHEAST CORNER OF SECTION 27 AND A FOUND BRASS CAP MONUMENT AT THE NORTHWEST CORNER OF SECTION 27, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY. SHOWN HEREON AS N88°23'58"W.

### NARRATIVE

THE PURPOSE OF THIS PLAT IS TO DIVIDE THE BELOW DESCRIBED PROPERTY INTO LOTS AND STREETS AS SHOWN. ALL BOUNDARY CORNERS AND REAR LOT CORNERS WERE SET WITH A 5/8" X 24" REBAR AND PLASTIC CAP STAMPED "REEVE & ASSOCIATES".

### BOUNDARY DESCRIPTION

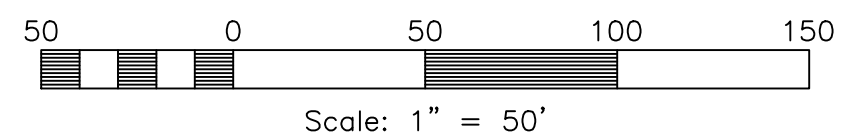
PART OF THE NORTHEAST QUARTER OF SECTION 27, TOWNSHIP 7 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN AN EXISTING FENCE LINE, BEING NORTH 88°23'58" WEST 818.19 FEET AND SOUTH 01°36'02" WEST 1342.27 FEET FROM A FOUND WITNESS CORNER MONUMENT TO THE NORTHEAST CORNER OF SAID SECTION 27 (SAID WITNESS CORNER BEING SOUTH 00°30'30" EAST 10.00 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 27); THENCE SOUTH 00°01'42" EAST 710.13 FEET ALONG SAID FENCE LINE TO THE NORTHERLY LINE OF THE GROVE AT JDC PHASE 1; THENCE ALONG SAID NORTHERLY LINE THE FOLLOWING SEVEN (7) COURSES: (1) SOUTH 89°58'18" WEST 130.00 FEET; (2) NORTH 81°07'51" WEST 60.73 FEET; (3) SOUTH 89°54'16" WEST 132.63 FEET; (4) NORTH 00°05'44" WEST 160.00 FEET; (5) SOUTH 89°54'16" WEST 132.18 FEET; (6) NORTH 82°12'42" WEST 66.67 FEET; AND (7) SOUTH 89°54'16" WEST 131.46 FEET TO THE EASTERLY LINE OF WEST PARK VILLAGE PHASE 2; THENCE NORTH 00°05'44" WEST 45.48 FEET TO A POINT IN AN EXISTING FENCE LINE; THENCE SOUTH 88°34'23" EAST 4.90 FEET ALONG SAID FENCE LINE TO A FENCE CORNER OF AN EXISTING FENCE LINE; THENCE NORTH 01°15'09" WEST 535.69 FEET ALONG SAID FENCE LINE TO THE EXISTING PLAIN CITY LIMITS; THENCE ALONG SAID LIMITS THE FOLLOWING FOUR (4) COURSES: (1) SOUTH 85°47'44" EAST 136.67 FEET; (2) SOUTH 85°46'25" EAST 66.01 FEET; (3) SOUTH 85°47'44" EAST 324.44 FEET TO A POINT IN AN EXISTING FENCE LINE; AND (4) SOUTH 85°48'23" EAST 133.79 FEET TO THE POINT OF BEGINNING.

CONTAINING 420,813 SQUARE FEET OR 9.661 ACRES.

### LEGEND

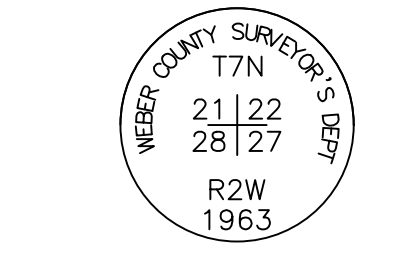
- SECTION CORNER
- WITNESS CORNER
- SET 5/8" X 24" REBAR AND PLASTIC CAP STAMPED "REEVE & ASSOCIATES"
- STREET CENTERLINE MONUMENT
- BOUNDARY LINE
- LOT LINE
- ADJOINING PROPERTY
- EASEMENTS
- SECTION/MONUMENT TIE LINE
- ROAD CENTERLINE



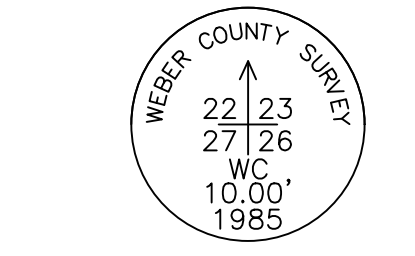
Scale: 1" = 50'

### CURVE TABLE

#	RADIUS	ARC LENGTH	CHD LENGTH	TANGENT	CHD BEARING	DELTA
C1	533.00'	40.29'	40.28'	20.15'	S01°01'24"W	4°19'51"
C2	500.00'	37.79'	37.79'	18.91'	N01°01'24"E	4°19'51"
C3	250.00'	4.57'	4.57'	2.28'	S00°37'08"E	1°02'48"
C4	283.00'	5.17'	5.17'	2.58'	N00°37'08"W	1°02'48"
C5	10.50'	16.42'	14.80'	10.43'	N4°39'14"E	89°35'32"
C6	470.00'	47.20'	47.18'	23.62'	S88°40'22"E	5°45'16"
C7	500.00'	50.22'	50.20'	25.13'	S88°40'22"E	5°45'16"
C8	10.50'	17.36'	15.45'	11.41'	S44°10'50"E	94°44'19"
C9	530.00'	53.23'	53.21'	26.64'	S88°40'22"E	5°45'16"
C10	20.00'	12.06'	11.88'	6.22'	N76°55'27"E	34°33'37"
C11	20.00'	29.94'	27.22'	18.57'	S42°54'43"E	85°46'02"
C12	65.00'	53.68'	52.16'	28.48'	N63°18'05"E	47°18'52"
C13	65.00'	75.35'	71.20'	42.56'	S39°50'02"E	66°24'53"
C14	65.00'	46.69'	45.70'	24.40'	S13°57'10"W	41°09'30"
C15	20.00'	12.06'	11.88'	6.22'	S17°15'06"W	34°33'37"



MONUMENT DETAIL 1  
(NOT TO SCALE)



MONUMENT DETAIL 2  
(NOT TO SCALE)

### DEVELOPER:

NILSON HOMES  
1740 COMBE ROAD  
SOUTH OGDEN, UT.  
84403  
(801) 392-8100

### LINE TABLE

LINE #	BEARING	DISTANCE
L1	S00°21'24"E	49.01'
L2	S88°29'30"W	8.26'
L3	S00°21'24"E	56.33'
L4	S16°57'31"W	94.41'
L5	S00°05'44"E	5.18'
L6	S00°05'44"E	0.61'



**WEBER COUNTY PLANNING COMMISSION APPROVAL**

THIS IS TO CERTIFY THAT THIS SUBDIVISION PLAT WAS DULY APPROVED BY THE WEBER COUNTY PLANNING COMMISSION. SIGNED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

CHAIRMAN, WEBER COUNTY PLANNING COMMISSION

**WEBER COUNTY ENGINEER**

I HEREBY CERTIFY THAT THE REQUIRED PUBLIC IMPROVEMENT STANDARDS AND DRAWINGS FOR THIS SUBDIVISION CONFORM WITH THE COUNTY STANDARDS AND THE AMOUNT OF THE FINANCIAL GUARANTEE IS SUFFICIENT FOR THE INSTALLATION OF THESE IMPROVEMENTS.

WEBER COUNTY ENGINEER

**WEBER COUNTY COMMISSION ACCEPTANCE**

THIS IS TO CERTIFY THAT THIS SUBDIVISION PLAT, THE DEDICATION OF STREETS AND OTHER PUBLIC WAYS AND FINANCIAL GUARANTEE OF PUBLIC IMPROVEMENTS ASSOCIATED WITH THIS SUBDIVISION, THEREON ARE HEREBY APPROVED AND ACCEPTED BY THE COMMISSIONERS OF WEBER COUNTY, UTAH.

SIGNED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

CHAIRMAN, WEBER COUNTY COMMISSION

ATTEST \_\_\_\_\_ TITLE \_\_\_\_\_

**WEBER COUNTY SURVEYOR**

I HEREBY CERTIFY THAT THE WEBER COUNTY SURVEYOR'S OFFICE HAS REVIEWED THIS PLAT AND ALL CONDITIONS FOR APPROVAL BY THIS OFFICE HAVE BEEN SATISFIED. THE APPROVAL OF THIS PLAT BY THE WEBER COUNTY SURVEYOR DOES NOT RELIEVE THE LICENSED LAND SURVEYOR WHO EXECUTED THIS PLAT FROM THE RESPONSIBILITIES AND/OR LIABILITIES ASSOCIATED THEREWITH.

SIGNED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

WEBER COUNTY SURVEYOR

RECORD OF SURVEY # \_\_\_\_\_

**WEBER COUNTY ATTORNEY**

I HAVE EXAMINED THE FINANCIAL GUARANTEE AND OTHER DOCUMENTS ASSOCIATED WITH THIS SUBDIVISION PLAT, AND IN MY OPINION THEY CONFORM WITH THE COUNTY ORDINANCE APPLICABLE THERETO AND NOW IN FORCE AND AFFECT.

SIGNED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

WEBER COUNTY ATTORNEY

**Weber County Recorder**

Entry No. \_\_\_\_\_ Fee Paid \_\_\_\_\_

Filed For Record \_\_\_\_\_

And Recorded, \_\_\_\_\_

At \_\_\_\_\_ in Book \_\_\_\_\_

Of The Official Records, Page \_\_\_\_\_

Recorded For: \_\_\_\_\_

Weber County Recorder \_\_\_\_\_ Deputy.

**Project Info.**

Surveyor: T. HATCH

Designer: N. ANDERSON

Begin Date: 3-1-2023

Name: THE GROVE AT JDC RANCH SUBD. PHASE 2

Number: 1301-D41

Revision: 6-25-2024

Scale: 1"=50'

Checked: \_\_\_\_\_

**Reeve & Associates, Inc.**  
5160 S 1500 W, RIVERDALE, UTAH 84405  
TEL: (801) 621-3100 FAX: (801) 621-2666 www.reeve.co

**WEBER COUNTY  
IMPROVEMENTS GUARANTEE AGREEMENT**

**THIS AGREEMENT** (herein "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

**\*\*\*\*\* PARTIES \*\*\*\*\***

**"APPLICANT":** \_\_\_\_\_

a(n): \_\_\_\_\_ (corporation, limited liability company, partnership, individual).

address: \_\_\_\_\_ city: \_\_\_\_\_ state: \_\_\_\_\_ zip: \_\_\_\_\_

telephone: (\_\_\_\_) \_\_\_\_\_, facsimile: (\_\_\_\_) \_\_\_\_\_

**"COUNTY":** Weber County, a political subdivision of the State of Utah,  
2380 Washington BLVD, Ogden, UT 84401,  
(801) 399-8374.

**\*\*\*\*\* RECITALS \*\*\*\*\***

**WHEREAS**, APPLICANT desires to post the following improvement guarantee(s) (check):

- Off-site improvement guarantee
- On-site improvement guarantee

with the COUNTY for \_\_\_\_\_  
(description or name of Project)

located at \_\_\_\_\_  
(address of Project)

**WHEREAS**, COUNTY ordinances require APPLICANT to guarantee the construction of certain improvements prior to either the recordation of the above described subdivision plat or the actual issuance of any permit(s) or approval(s) related to the above-described Project; and

**WHEREAS**, the terms of either the subject subdivision plat approval or the issuance of the subject permit(s)/approval(s) require APPLICANT to complete the following improvements, (herein "the Improvements") (check one and complete):

specified in Exhibit   B  , attached hereto and incorporated herein by this reference;

- or -

described as follows: \_\_\_\_\_; and

**WHEREAS**, COUNTY will not record the subject subdivision or grant the subject permit(s)/approval(s) until adequate provision has been made to guarantee completion of the Improvements and to warrant the Improvements shall be maintained and remain free from any defects or damage, which improvements and required warranty are estimated to cost the amount set forth herein, and which improvements shall be installed in accordance with the specifications of COUNTY, and inspected by COUNTY;

**NOW THEREFORE**, For good and valuable consideration, the parties agree as follows:

**\* \* \* \* \* TERMS AND CONDITIONS \* \* \* \* \***

1. **PURPOSE FOR AGREEMENT.** The parties hereto expressly acknowledge that the purpose of this Agreement is not only to guarantee the proper completion of the Improvements named herein, but also, among other things, to eliminate and avoid the harmful effects of unauthorized subdivisions and other land developments which may leave property or improvements improperly completed, undeveloped or unproductive.

2. **UNRELATED OBLIGATIONS OF APPLICANT.** The benefits and protection of the Proceeds specified herein shall inure solely to COUNTY and not to third parties, including, but not limited to, lot purchasers, contractors, subcontractors, laborers, suppliers, or others. COUNTY shall not be liable to claimants or others for obligations of APPLICANT under this Agreement. COUNTY shall further have no liability for payment of any costs or expenses of any party who attempts to make a claim under this Agreement, and shall have under this Agreement no obligation to make payments to, give Notices on behalf of, or otherwise have obligations to any alleged claimants under this Agreement.

3. **AGREEMENT DOCUMENTS.** All data which is used by COUNTY to compute the cost of or otherwise govern the design and installation of the Improvements is hereby made a part of this Agreement, and is incorporated herein by this reference. This Agreement incorporates herein by reference any subject subdivision plat, plan, construction drawing, permit, condition of approval, and any and all other relevant data and specifications required by the Weber County Land Use Code.

4. **COMPLETION DATE.** APPLICANT shall complete the Improvements: (check one and complete)

within a period of \_\_\_\_\_  Year(s)  Months (check one) from the date this Agreement was entered into;

- or -

as specified in Exhibit \_\_\_\_\_ (Completion Schedule), attached hereto and incorporated herein by this reference.

5. **FEES.** APPLICANT agrees to pay all Fees required by COUNTY for the entire Project prior to the issuance of any subsequent permit or approval within the Project.

6. **SPECIFIC PERFORMANCE.** APPLICANT has entered into this Agreement with COUNTY for the purpose of guaranteeing construction of the Improvements and payment of the Fees. COUNTY shall be entitled to specifically enforce APPLICANT'S obligation under this Agreement to construct and install the Improvements in a manner satisfactory to COUNTY, and to pay the Fees.

7. **APPLICANT'S INDEPENDENT OBLIGATION.** APPLICANT EXPRESSLY ACKNOWLEDGES, UNDERSTANDS AND AGREES that its obligation to complete and warrant the Improvements and pay the Fees and fulfill any other obligation under this Agreement, COUNTY ordinances, or other applicable law is independent of any obligation or responsibility of COUNTY, either express or implied. APPLICANT agrees



that its obligation to complete and warrant the Improvements and pay the Fees is not and shall not be conditioned upon the commencement of actual construction work in the subdivision or development or upon the sale of any lots or part of the subdivision or development. APPLICANT further acknowledges (a) that its contractual obligation to complete and warrant the Improvements and pay the Fees pursuant to this Agreement is independent of any other remedy available to COUNTY to secure proper completion of the Improvements and payment of the Fees; (b) that APPLICANT shall not assert as a defense that COUNTY has remedies against other entities or has other remedies in equity or at law that would otherwise relieve APPLICANT of its duty to perform as outlined in this Agreement or preclude COUNTY from requiring APPLICANT'S performance under this Agreement; (c) that APPLICANT has a legal obligation, independent of this Agreement, to timely complete and pay for the Improvements in full and timely pay the Fees in full; and (d) should APPLICANT Default under this Agreement in any degree, APPLICANT agrees to compensate COUNTY for all costs, including Incidental Costs, related to APPLICANT'S failure to perform its obligation to complete and warrant the Improvements or pay the Fees to the extent that such costs are not adequately covered by the Proceeds ("Proceeds" defined in paragraph 10).

8. **INCIDENTAL COSTS.** "Incidental Costs", as used in this Agreement, shall mean engineering and architect fees, administrative expenses, court costs, attorney's fees (whether incurred by in-house or independent counsel), insurance premiums, mechanic's or materialmen's liens, and any other cost and interest thereon incurred by COUNTY, occasioned by APPLICANT'S Default under this Agreement.

9. **DEFAULT.** "Default," as used in this Agreement, shall mean, in addition to those events previously or subsequently described herein, a party's failure to perform, in a timely manner, any obligation, in whole or in part, required of such party by the terms of this Agreement or required by COUNTY ordinance or other applicable law. In addition, the following shall also be considered Default on the part of APPLICANT: APPLICANT'S abandonment of the Project, as determined by COUNTY; APPLICANT'S insolvency, appointment of a receiver, or filing of a voluntary or involuntary petition in bankruptcy; APPLICANT'S failure to file with COUNTY a renewed Financial Guarantee, as defined in paragraph 10, more than 60 days before a Financial Guarantee will expire, unless APPLICANT'S obligations have been terminated under paragraph 36(b); APPLICANT'S Escrow Repository's or Financial Institution's insolvency, appointment of a receiver, filing of a voluntary or involuntary petition in bankruptcy, or failure to perform under the terms of this agreement; the commencement of a foreclosure proceeding against the Project property; or the Project property being conveyed in lieu of foreclosure.

The occurrence of such shall give the other party or parties the right to pursue any and all remedies available at law, in equity, or otherwise available pursuant to the terms of this Agreement. Only the parties hereto are authorized to determine Default. Default shall not be declared prior to the other party receiving written notice.

10. **GUARANTEE OF IMPROVEMENTS.** APPLICANT hereby files, as an independent guarantee (herein "Financial Guarantee") with COUNTY for the purpose of insuring construction and installation of the Improvements and payment of the Fees, one of the following (check one and complete applicable information):

CASH CERTIFICATE, identified by the following:

Escrow Account: \_\_\_\_\_,

Escrow Account Repository: \_\_\_\_\_,

IRREVOCABLE LETTER OF CREDIT (herein the "Letter of Credit"), identified by the following:

Letter of credit account or number: \_\_\_\_\_,

Financial Institution: \_\_\_\_\_

The Financial Guarantee shall be in the amount of one hundred ten percent (110%) of the County Engineer's Cost Estimate (see also Exhibit A attached hereto). The Escrow Certificate or Letter of Credit shall be issued in favor of COUNTY to the account of APPLICANT herein, in the amount of \$ \_\_\_\_\_ (herein the "Proceeds"), and is made a part of this Agreement as Exhibit C (Escrow Certificate or Letter of Credit).

11. **PARTIAL RELEASE OF PROCEEDS.** As the Improvements are initially accepted by COUNTY and the Fees are paid, the APPLICANT may submit written request to COUNTY for authorization for a partial release of Proceeds. APPLICANT is only entitled to make a request once every 30 days. The amount of any release shall be determined in the sole discretion of COUNTY. No release shall be authorized by COUNTY until such time as COUNTY has inspected the Improvements and found them to be in compliance with COUNTY standards and verified that the Fees have been paid. Payment of Fees or completion of Improvements, even if verified by COUNTY, shall not entitle APPLICANT to an automatic authorization for a release of the Proceeds. At no time may APPLICANT request a release of funds directly from Escrow Account Repository or Financial Institution.

12. **NOTICE OF DEFECT.** COUNTY will provide timely notice to APPLICANT whenever an inspection reveals that an Improvement does not conform to the standards and specifications shown on the Improvement drawings on file in COUNTY's Engineering and Surveyor's Office or is otherwise defective. The APPLICANT will have 30 days from the issuance of such notice to cure or substantially cure the defect.

13. **FINAL ACCEPTANCE.** Notwithstanding the fact that Proceeds may be released upon partial completion of the Improvements, neither any partial release nor any full release of the Proceeds shall constitute final acceptance of the Improvements by COUNTY. Final acceptance of the Improvements shall be official only upon written notice to APPLICANT from COUNTY expressly acknowledging such and only after APPLICANT provides a policy of title insurance, where appropriate, for the benefit of the County showing that the APPLICANT 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.

14. **WARRANTY OF IMPROVEMENTS.** Following initial acceptance of the Improvements, APPLICANT hereby warrants that the Improvements shall be maintained by APPLICANT and remain free from defects or damage as determined by COUNTY, such that the Improvements continue to meet COUNTY standards for \_\_\_\_\_ years following said initial acceptance.

15. **RETAINAGE.** APPLICANT expressly agrees that, notwithstanding any partial release of any of the Proceeds, the Proceeds shall not be released below 10% of the estimated cost of the Improvements (herein the "Retainage"), as specified herein, for the timeframe specified in paragraph 14. The Retainage shall be held to insure that the Improvements do not have any latent defects or damage as determined by COUNTY, such that the Improvements do not continue to meet COUNTY standards for the timeframe specified in paragraph 14. Notwithstanding said Retainage, APPLICANT shall be responsible for bringing any substandard, defective, or damaged Improvements to COUNTY standard if the Retainage is inadequate to cover any such Improvements.

16. **APPLICANT INDEMNIFICATION.** APPLICANT agrees to indemnify, defend, and save harmless COUNTY, its elected officials, officers, employees, agents, and volunteers from and against any and all liability which may arise as a result of the installation of the Improvements prior to COUNTY'S initial acceptance of the Improvements as defined herein, and from and against any and all liability which may arise as a result of any Improvements which are found to be defective during the warranty period covered

by this Agreement. With respect to APPLICANT'S agreement to defend COUNTY, as set forth above, COUNTY shall have the option to either provide its own defense, with all costs for such being borne by APPLICANT, or require that APPLICANT undertake the defense of COUNTY.

17. **FINAL RELEASE OF PROCEEDS.** In the event the Improvements have been installed to the satisfaction of COUNTY and the Fees have been paid pursuant to this Agreement and COUNTY ordinances within the above stated time period(s), COUNTY agrees to execute a written release to Escrow Account Repository or Financial Institution of the remaining Proceeds.

18. **DEMAND FOR AND USE OF PROCEEDS.** In the event APPLICANT fails to install Improvements to the satisfaction of COUNTY, or the Fees are not paid pursuant to this Agreement and COUNTY ordinances within the above stated time period(s), or APPLICANT Defaults on any obligation under this Agreement or COUNTY ordinances, as determined at the sole discretion of COUNTY, COUNTY shall send Notice of APPLICANT'S Default to Escrow Account Repository or Financial Institution with a written demand for the release of Proceeds. COUNTY may, at its sole discretionary option, use and expend all the Proceeds or such lesser amount as may be estimated by COUNTY to be necessary to complete Improvements, pay Fees, and/or reimburse COUNTY for Incidental Costs as required herein.. COUNTY may, at its sole discretionary option, convert the Proceeds to a COUNTY held cash escrow for future satisfactory installation of Improvements.

19. **INADEQUATE PROCEEDS.** If the Proceeds are inadequate to pay the cost of the completion of the Improvements according to COUNTY standards or to pay the Fees or to compensate for Incidental Costs, for whatever reason, including previous reductions, APPLICANT shall be responsible for the deficiency independent of the Financial Guarantee. Additionally, no further approvals, permits or business licenses shall be issued, and any existing approvals, permits or business licenses applicable to the location of the Improvements may be immediately suspended or revoked by COUNTY'S Community and Economic Development Director until the Improvements are completed and the Fees are paid, or, until a new guarantee acceptable to the COUNTY has been executed to insure completion of the remaining Improvements and payment of the Fees. Furthermore, the cost of completion of the Improvements shall include reimbursement to COUNTY for all costs including, but not limited to, construction costs and any Incidental Costs incurred by COUNTY in completing the Improvements or collecting the Proceeds.

20. **ACCESS TO PROPERTY.** Should COUNTY elect to use the Proceeds to complete the Improvements, APPLICANT herein expressly grants to COUNTY and any contractor or other agent hired by COUNTY the right of access to the Project property to complete the Improvements.

21. **IMPROVEMENT STANDARDS.** Improvements shall be done according to the specifications and requirements of the COUNTY. All work shall be subject to the inspection of COUNTY. Any questions as to conformity with COUNTY specifications or standards, technical sufficiency of the work, quality, and serviceability shall be decided by the County Engineer. The County Engineer's decision shall be final and conclusive.

22. **SUBSTANDARD IMPROVEMENTS.** Should any Improvements prove to be substandard or defective within the timeframe specified in paragraph 14, COUNTY shall notify APPLICANT in writing of such substandard or defective Improvements. APPLICANT shall then have 15 days from Notice from the COUNTY in which to commence repair of the Improvements, and a reasonable amount of time, as determined by COUNTY, which shall be specified in the Notice, to complete repair of the Improvements. Should APPLICANT fail to either commence repair of the Improvements or complete repair of the Improvements within the required time periods, COUNTY may exercise its option to remedy the defects and demand payment for such from APPLICANT, should the Proceeds be insufficient to cover the costs incurred by COUNTY.

23. **INSURANCE.** Should COUNTY elect to install, complete, or remedy any defect or damage in the

Improvements, APPLICANT shall be responsible for the payment of the premium for an insurance policy covering any liability, damage, loss, judgment, or injury to any person or property, including, but not limited to, damage to APPLICANT or its property as a result of the work of any contractor or agent hired by COUNTY to complete or remedy the Improvements. The minimum dollar amount and the scope of coverage of the insurance policy shall be determined and set by COUNTY. APPLICANT shall indemnify, defend, and hold harmless COUNTY, its officers, employees, and agents for any liability which exceeds the insurance policy limit. COUNTY, at its option, may collect and expend the Proceeds to make the premium payments should APPLICANT fail to pay said premium. No permit, approval or business license shall be issued by COUNTY, and any existing permit, approval, or business license shall be suspended until said premium is initially paid and a bond is in place to cover subsequent payments.

24. **NOTICE.** Notice to any party herein shall be mailed or delivered to the address shown in this Agreement. The date Notice is received at the address shown in this Agreement shall be the date of actual Notice, however accomplished.

25. **MECHANIC/MATERIAL LIENS.** Should COUNTY elect to complete or remedy the Improvements, APPLICANT shall indemnify, defend, and hold harmless COUNTY from and against any liability which exceeds the Proceeds for the payment of any labor or material liens as a result of any work of any contractor (including subcontractors and materialmen of any such contractor or agent) hired by COUNTY or which may arise due to either a defect in or failure of this Agreement or insufficient Proceeds to cover such costs.

26. **WAIVER.** The failure by any party to insist upon the immediate or strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a Default thereof shall not constitute a waiver of any such Default or any other covenant, agreement, term, or condition. No waiver shall affect or alter the remainder of this Agreement, but each and every other covenant, agreement, term, and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring Default.

27. **ATTORNEY'S FEES.** In the event there is a Default under this Agreement and it becomes reasonably necessary for any party to employ the services of an attorney in connection therewith, either with or without litigation, on appeal or otherwise, the losing party to the controversy shall pay to the successful party reasonable attorney's fees incurred by such party, and, in addition, such costs and expenses as are incurred in enforcing this Agreement.

28. **TIME IS OF THE ESSENCE.** Time is of the essence of this Agreement. In case either party shall Default on its obligations at the time fixed for the performance of such obligations by the terms of this Agreement, the other party may pursue any and all remedies available in equity or law.

29. **GOVERNING LAW.** This Agreement shall be interpreted pursuant to, and the terms thereof governed by, the laws of the State of Utah. This Agreement shall be further governed by COUNTY ordinances in effect at the time of the execution of this Agreement. However, the parties expressly acknowledge that any subdivision or other development regulations enacted after the execution of this Agreement, which are reasonably necessary to protect the health, safety, and welfare of the residents of COUNTY, shall also apply to the subdivision or development which is the subject of this Agreement.

30. **SUCCESSORS.** "APPLICANT" and "COUNTY," as used in this Agreement, shall also refer to the heirs, executors, administrators, successors, or assigns of APPLICANT and COUNTY respectively.

31. **INDUCEMENT.** The making and execution of this Agreement has been induced by no representations, statements, warranties, or agreements other than those herein expressed.

32. **INTEGRATION.** This Agreement embodies the entire understanding of the parties, and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to

the subject matter herein.

33. **MODIFICATION.** Except as otherwise authorized by this Agreement, this instrument may be amended or modified only by an instrument of equal formality signed by the respective parties.

34. **CAPTIONS.** The titles or captions of this Agreement are for convenience only and shall not be deemed in any way to define, limit, extend, augment, or describe the scope, content, or intent of any part or parts of this Agreement.

35. **SEVERABILITY.** If any portion of this Agreement is declared invalid by a court of competent jurisdiction, the remaining portions shall not be affected thereby, but shall remain in full force and effect.

36. **TERMINATION.**

- (a) APPLICANT cannot unilaterally terminate its obligations under this Agreement.
- (b) If, under the terms of this Agreement, COUNTY releases the full amount of the Proceeds or demands and receives the full remaining amount of the Proceeds, then APPLICANT'S obligations under paragraphs 4 and 10 shall terminate.
- (c) All rights and obligations in this Agreement that are not terminated under sub-paragraph (b) shall survive until all applicable statutes of limitations have run with respect to the types of claims that may be associated with those rights and obligations.
- (d) The entire Agreement shall terminate when all applicable statutes of limitations have run or when the parties jointly execute an agreement to terminate this Agreement.

37. **CONFLICT.** Any conflict between this Agreement and its exhibits or any other document shall be interpreted against the exhibit or other document and in favor of statements made in the numbered paragraphs of this Agreement.