



W2520458

E# 2520458 PG 1 OF 12
 ERNEST D ROWLEY, WEBER COUNTY RECORDER
 23-MAR-11 352 PM FEE \$0.00 DEP NNP
 REC FOR: WEBER COUNTY PLANNING

WEBER COUNTY

SITE PLAN DEVELOPMENT

AGREEMENT

1. **Parties:** The parties to this Site Plan Development Agreement ("the Agreement") are ("the Developer") and Weber County Corp. ("the County").
2. **Effective Date:** The Effective Date of this Agreement will be the date that this agreement is recorded in the offices of the County Recorder.

RECITALS

WHEREAS, the Developer seeks permission to improve property within the unincorporated area of Weber County, located at 2612 Hwy 162 Eden, Utah, 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 on the "property" and thereby to limit the harmful effects of substandard development; and

WHEREAS, the purpose of this Agreement is to protect the County from the cost of completing Site Development improvements, and is not executed for the benefit of material, men, laborers, or others providing work, services or material to the Property; and

WHEREAS, the mutual promises, covenants, and obligations contained in this Agreement are authorized by state law and the County's Zoning Ordinance Chapter 36-7 as amended;

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 improvements listed on Exhibit B attached hereto and incorporated herein by this reference ("the Improvements"). The Developer's obligation to complete the Improvements will arise upon Design Review Approval/Conditional Use Approval by the County, will be independent of any obligations of the County contained herein, and will not be conditioned on the commencement of construction on the site or improvements within the site.

4. **Security:** Upon request for permanent power or occupancy and to secure the performance of his obligations hereunder, the Developer will deposit with the County on or prior to the effective date, a bond with corporate surety, an irrevocable letter of credit or deposit in Escrow in the amount of \$ 500.00. The bond, letter of credit or escrow hereinafter referred to as ("Letter of Credit") will be issued by _____ Bank (or other financial institution approved by the County) to be known as ("Bank"), will be payable at sight to the County and will bear an expiration date not earlier than one year after the Effective Date of this Agreement. The letter of credit will be payable to the County at any time upon presentation of (i) a sight draft drawn on the issuing Bank in the amount to which the County is entitled to draw pursuant to the terms of this Agreement; or (ii) an affidavit executed by an authorized County official stating that the Developer is in default under this Agreement; and (iii) the original of the letter of credit. A letter of credit will be substantially similar to Exhibit C attached hereto and incorporated herein by this reference.
5. **Standards:** The Developer will construct the Improvements according to the Public Works Standards and Technical Specifications adopted by Weber County August 1982, as incorporated herein by this reference.
6. **Warranty:** The Developer warrants that all off-site improvements to be dedicated to the county, 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 will commence work on the Improvements within six months from the Effective Date of this Agreement (the "Commencement Period") and the Improvements, each and every one of them, will be completed within one year from the Effective Date of this Agreement (the "Completion Period").
8. **Compliance with Law:** The Developer will comply with all relevant laws, ordinances, and regulations in effect at the time of 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 approval.
9. **Dedication:** The developer will dedicate to the County or other applicable agency as designated by the County the off-site Improvements as listed on Exhibit B attached hereto and incorporated herein by this reference pursuant to the procedure described in Paragraph 12 below.

COUNTY'S OBLIGATIONS

10. **Inspection and Certification:** The County will inspect the Improvements as they are being constructed and, if acceptable to the County, certify such improvement as being in compliance with the standards and specifications of the County. Certification by the County Building Inspector does not constitute a waiver by

the County of the right to draw funds under the Letter of Credit on account of defects in or failure of any improvement that is detected or which occurs following such certification.

11. **Notice of Defect:** The County will provide timely notice to the Developer whenever inspection reveals that an improvement does not conform to the standards and specifications shown on the approved site plan improvement drawings on file in the Weber County Planning Office or is otherwise defective.
12. **Acceptance of Dedication:** The County or other applicable agency will accept the dedication of any validly certified improvement within 30 days of the Developer's offer to dedicate the improvement. Acceptance of the dedication of any improvement does not constitute a waiver by the County of the right to draw funds under the Letter of Credit on account of any defect in or failure of the improvement that is detected or which occurs after the acceptance of the dedication.
13. **Reduction of Security:** After the acceptance of any improvement, the amount which the County is entitled to draw on the Letter of Credit 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 verifying the acceptance of the improvement and waiving its right to draw on the Letter of Credit 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 credit will be available to the County for 90 days after expiration of the Warranty Period.
14. **Use of Proceeds:** The County will use funds drawn under the Letter of Credit only for the purposes of completing the Improvements or correcting defects in or failures of the Improvements.

OTHER PROVISION

15. **Events of Default:** The following conditions, occurrences or actions will constitute a default by the Developer during the Construction Period *or thereafter:*

- a. Developer's failure to commence construction of the Improvements within six months of final approval;
- b. Developer's failure to complete construction of the Improvements within one year of final approval;
- 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.

e. failure to remove sales trailer after the 120 day Temporary period.

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

16. **Measure of Damages:** The measure of damages for breach of this Agreement will 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 Letter of Credit 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 or whether development ever commenced.
17. **County's Rights Upon Default:** When any event of default occurs, the County may draw on the Letter of Credit 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 will 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 Letter of Credit to a subsequent developer (or a lender) who has acquired the Site 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 occupancy approval during which time the Developer will have no right to operate any business or occupy the site without the express written approval of the County or until the Improvements are completed. These remedies are cumulative in nature except that during the Warranty Period, the County's only remedy will be to draw funds under the Letter of Credit.
18. **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.
19. **No Waiver:** No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will 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 will 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 will not constitute the approval of any wrongful act by the Developer or the acceptance of any improvement.
20. **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 will be properly notarized before it may be effective.

21. **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, will 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 will bear its own costs in their entirety.
22. **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 site.
23. **Third Party Rights:** No person or entity who or which is not a party to this Agreement will 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 neighboring property owner may bring an action in mandamus to compel the County to exercise its rights.
24. **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.
25. **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 will not be included if such times prevent the Developer or County from performing his/its obligations under the Agreement.
26. **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 will 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.
27. **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 will 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 will release the original developer's Letter of Credit 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.
28. **Notice:** Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or three (3) days after notice is deposited with the U.S Postal Service, postage prepaid, and addressed as follows:

if to Developer (Attn)
(Address)

Pat Brennan

4829 E. 3900 N
Eden, UT 84310

if to County:

Attn: County Planning
2380 Washington Blvd.
Ogden, UT 84401

29. **Recordation:** Either Developer or County may record a copy of this Agreement in the Clerk and Recorder's Office of Weber County, Utah.
30. **Immunity:** Nothing contained in this Agreement constitutes a waiver of the County's sovereign immunity under any applicable state law.
31. **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 Letter of Credit will 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 22 day of March, 2011.

Developer

INDIVIDUAL ACKNOWLEDGEMENT

State of Utah)
)
 County of Weber)

On the 22 day of March A.D. 2011, personally appeared before me
Pat Brennan the signer(s) of the within instrument, who duly
 acknowledged to me that he/she executed the same.



Notary Public

Residing at: Ogden, Utah

APPROVED AS TO FORM:

[Signature]
 Weber County Attorney

[Signature]
 Chairperson, Weber County Commission

Date 3/22/2011

ATTEST:

by Fátima Fernelius, Admin Asst
 Weber County Clerk C/A

EXHIBIT A: PROPERTY DESCRIPTION/SITE PLAN

EXHIBIT B: REQUIRED ON & OFF SITE IMPROVEMENTS

EXHIBIT C: FINANCIAL GUARANTEE

Exhibit A

LOT 3, LITTLE BEAR SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF, AS RECORDED IN THE OFFICE OF THE WEBER COUNTY RECORDER. TOGETHER WITH AN EASEMENT FOR RIGHT OF WAY (UTILITY AND ROAD EASEMENT) AS GRANTED BY BAD BEAR INC, A UTAH CORPORATION IN THAT CERTAIN GRANT OF EASEMENT FOR RIGHT OF WAY (UTILITY AND ROAD EASEMENT) RECORDED OCTOBER 14, 1999 AS ENTRY NO. 1668066 IN BOOK 2038 AT PAGE 2523, WEBER COUNTY RECORDER, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEING A PART OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 7 NORTH, RANGE 1 EAST OF THE SALT LAKE BASE & MERIDIAN, BEGINNING AT A POINT ON THE SOUTH LINE LITTLE BEAR SUBDIVISION ACCORDING TO THE OFFICIAL PLAT THEREOF SAID POINT BEING LOCATED SOUTH 00D22'00" EAST 655.75 FEET ALONG THE SECTION LINE AND NORTH 89D21'05" WEST 476.72 FEET FROM THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER AND RUNNING THENCE SOUTH 89D21'05" EAST 27.00 FEET ALONG SAID SOUTH LINE, THENCE SOUTH 01D38'00" WEST 246.38 FEET THENCE SOUTH 10D39'11" EAST 55.64 FEET TO THE NORTH LINE OF STATE HIGHWAY 162, THENCE 47.55 FEET ALONG THE ARC OF A 1750.70 FOOT RADIUS CURVE TO THE RIGHT (CHORD BEARS NORTH 53D08'12" WEST 47.55 FEET) ALONG SAID NORTH LINE TO THE WEST LINE OF BAD BEAR SUBDIVISION ACCORDING TO THE OFFICIAL PLAT THEREOF; THENCE NORTH 01D38'00" EAST 272.85 FEET ALONG SAID WEST LINE TO THE POINT OF BEGINNING.

DIG-IT, INC.

P.O. Box 1073
Eden, UT 84310
801-430-7217
801-745-3147 Fax

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Estimate

Date	Estimate #
2/22/2011	92

Name / Address
weber county

Exhibit B

Project				
2612north hwy 162 edne ut				
Description	Qty	Type	Unit Price	Total
trailer removal and regarding	1	ls	500.00	500.00
Sales Tax			6.50%	0.00
			Total	
			\$500.00	

Exhibit C

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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 \$ # 500.00 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:

See exhibit A.

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 22 day of Feb, 2010

Curtis Christensen for Weber County
Escrow Agent

Curtis Christensen
Signature

Escrow Certificate

Title: County Engineer

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State of Utah)
) ss:
 County of Weber)

On the 22 day of Feb., 2011 appeared before me

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



[Signature]
 Notary Public
 Residing at:

APPROVED AS TO FORM:

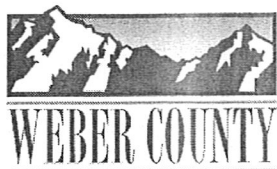
[Signature] 3/22/11
 Weber County Attorney Date

APPROVED:

[Signature] 3-22-2011
 Chairperson, Weber County Commission Date

ATTEST:

by Fatima Fernelis, Admin Assist
 Weber County Clerk C/A



Weber County Public Works Department Official Receipt

Receipt Date 22-FEB-2011

03:17:57 PM

Description ESCROW FOR SAND. SHOP

From Client DIG IT PAT BRENNAN

CHECK 500

Total Received: 500

Empl Id / Receipt Nbr: AM - 20734

Signature

*** Please Retain This Receipt For Your Personal Records ***