



Staff Report to the Weber County Commission

Weber County Planning Division

Synopsis

Application Information

Application Request: Consideration and action for the final plat of Eden Escape Plat A (part of Fairways at Wolf Creek PRUD) including approval of the Improvement Guarantee Agreement with a Letter of Credit.

Type of Decision: Administrative

Agenda Date: Tuesday, September 11, 2018

Applicant: RKW 96 LLC

File Number: UVF091916

Property Information

Approximate Address: 4200 North Sunrise Drive

Project Area: 9.25 acres Eden Escape Plat A

Zoning: FR-3

Existing Land Use: Vacant

Proposed Land Use: Residential

Parcel ID: 22-017-0017

Township, Range, Section: T7N, R1E, Section 22

Adjacent Land Use

North: Residential	South: Residential
East: Residential	West: Residential

Staff Information

Report Presenter: Ronda Kippen
rkippen@co.weber.ut.us
801-399-8768

Staff Reviewer: Steve Burton

Applicable Ordinances

- Title 101, Chapter 1 General Provisions, Section 7, Definitions
- Title 104, Zones, Chapter 17 Forest Residential Zones (FR-3)
- Title 104, Zones, Chapter 28 Ogden Valley Sensitive Lands Overlay Districts
- Title 106, Subdivisions, Chapter 1-8 as applicable
- Title 10, Chapter 27 Natural Hazards Areas

Development History

- The Fairways at Wolf Creek PRUD received conditional use approval by the County Commission on April 24, 2004 after receiving a positive recommendation from the Ogden Valley Planning Commission which heard and considered the proposal for 118 dwelling units and two duplex units (for an overall of 122 units) on February 17, 2004 and March 16, 2004.
- The Fairways at Wolf Creek PRUD Amendment 1 received conditional use approval by the County Commission on October 9, 2007 after receiving a positive recommendation for the club house redesign that was heard and approved by the Ogden Valley Planning Commission on September 25, 2007.
- The Fairways at Wolf Creek CUP Amendment 2 including the preliminary subdivision plan was approved by the County Commission on July 18, 2017 after receiving a positive recommendation from the Ogden Valley Planning Commission on June 27, 2017.

- The Fairways at Wolf Creek CUP Amendment 3 including the preliminary subdivision plan was approved by the County Commission on January 2, 2018 after receiving a positive recommendation from the Ogden Valley Planning Commission on November 28, 2017.
- The Fairways at Wolf Creek Phase 4 and Phase 5 received a unanimous positive recommendation for final subdivision from Ogden Valley Planning Commission on January 23, 2018.
- The developer changed the name of the project on March 1, 2018 from The Fairways at Wolf Creek Phase 4 and Phase 5 to Eden Escape Plat A and Plat B.

Summary

The Ogden Valley Planning Commission recommends final approval of Eden Escape Plat A which is part of Fairways at Wolf Creek PRUD. Eden Escape Plat A consists of 16 lots on 9.25 acres including three common areas sized from 0.129 acres to 1.343 acres. Eden Escape Plat A will gain ingress from a current parcel # 22-017-0012 owned by Fairways at Wolf Creek LLC, a public right of way known as Sunrise Drive, and Patio Drive, also a public right of way (see Exhibit A). The developer will provide and care for the amenities and common areas within the development by forming an HOA specific for Eden Escape Plat A.

Part of the consideration and action to be made by the County Commission is the consideration of an Improvement Guarantee Agreement that includes a Letter of Credit in the amount of \$1,008,483.74 (see Exhibit B for the Improvement Guarantee Agreement) for the proposed subdivision.

The applicant would now like to move forward with finalizing the subdivision process and has submitted the required information as outlined in the Uniform Land Use Code of Weber County (LUC) Title 108 Chapter 5 for consideration and approval of the proposed final subdivision. As part of the final subdivision requirements, subdivision review process and approval procedure, the proposal has been reviewed against the current subdivision ordinance, the approved PRUD and the standards in the FR-3 zone. The following is staff's analysis of the proposed final subdivision.

Analysis

General Plan: The proposal conforms to the Ogden Valley General Plan by encouraging development within the existing resort-related areas.

Zoning: The subject property is located in the Forest Residential Zone more particularly described as the FR-3 zone. The purpose and intent of the FR-3 zone is identified in the LUC §104-17-1 as:

"The purpose in establishing the Forest Residential, FR-3 zone is to provide for medium density residential uses of apartment clusters or condo-tels adjacent to and in conjunction with major recreational resorts, recreation areas and facilities in the mountain areas of Weber County on the basis that such medium density multiple-family housing is an integral and normal part of a recreational resort complex catering to the needs of both tourists and permanent home ownership. This zone is intended to be used in mountain locations in areas associated with major recreational resorts."

Lot area, frontage/width and yard regulations: The purpose and intent of a Planned Residential Unit Development (PRUD) is intended to "allow for diversification in the relationship of various uses and structures to their sites and to permit more flexibility of such sites and to encourage new and imaginative concepts in the design of neighborhood and housing projects in urbanizing areas." The site development standards for the FR-3 zone require a minimum lot area of 6,000 sq. ft. The proposed lots in Eden Escape Plat A vary in size from 9,889 square feet to 22,646 square feet and the lot widths vary from approximately 73 feet to 161 feet. The approved PRUD utilizes the allowed flexibility to create a neighborhood with varying lot sizes and varying lot widths. The final plats that have been submitted include the approved minimum yard setbacks:

- Front Yard: 15 feet
- Side Yard: 10 feet
- Rear Yard: 15 feet
- Side Facing Street (corner lot): 15 feet

Lots 1 through 4 in Eden Escape Plat A received approval for further reductions to the setbacks during the County Commission approval of Conditional Use Permit Amendment 3. The approved setbacks for these lots are:

- Front Yard: 10 feet
- Side Yard: 10 feet
- Rear Yard: 10 feet
- Side Facing Street (corner lot): 10 feet

Based on the allowed flexibility of a PRUD, the proposed layout, lot configuration and lot sizes, are acceptable. A "No Access" note and a "No Access Line" have been placed along the northern property lines of Lots 14, 15 & 16 per LUC §106-2-4(c) which prohibits interior lots from having frontage on two streets except where unusual conditions make other design undesirable. These lots are abutting a future right of way parcel owned by Fairways at Wolf Creek, LLC (Parcel# 22-017-0012) to ensure that the lots are accessed from Mountain Trail Court, a public right of way.

The applicant has provided the County with an engineered cost estimate that has been reviewed and approved by the Engineering Division. The applicant has requested that the bond with the County for the subdivision improvements be in a letter of credit form instead of a cash bond. The applicable information and request has been presented and approved by all applicable review agencies and is being forwarded with a positive recommendation to the County Commission to consider accepting a Letter of Credit in the amount of \$1,008,483.74 as part of the Improvement Guarantee Agreement for the proposed subdivision.

Common Area: The general requirements for a PRUD identify the need to preserve common open space. The proposed subdivision layout identifies common area with a sidewalk running along Patio Springs Drive. The common area in Eden Escape Plat A is approximately 2 acres which is 21.7% of the 9.25 acres. These areas will be dedicated upon recording by the following method:

"Granting to the county a permanent common open space easement on and over the said private open spaces to guarantee that the open spaces remain perpetually in access, parking, recreation or open space uses with ownership and maintenance being the responsibility of a home owners' association established with articles of association and bylaws which are satisfactory to the county"

The CC&R's comply with the provisions of the Condominium Ownership Act, U.C.A 1953, §57-8-1 et seq. per LUC §108-5-6(d)(3) for the preservation, maintenance and ownership of the common area.

Natural Hazards Overlay Zone: The proposed subdivision is located in a Zone "X" as determined by FEMA to be an area determined to be outside 500-year floodplain. A geotechnical study has been performed and a report has been prepared by Earthtec Engineering dated March 8, 2016, identified as Project #167003. A geologic site reconnaissance has taken place and a report has been prepared by IGES dated May 19, 2016, identified as Project #01855-007. All site development will need to adhere to the recommendations of these reports and a note has been added to the final plat. Also a separate "Natural Hazards Disclosure" document will be required to be recorded to provide adequate notice of the geotechnical and geological recommendations to future property owners.

Culinary water, irrigation water and sanitary sewage disposal: The applicant has provided a feasibility letter and a "Capacity Assessment Letter" from the Wolf Creek Water and Sewer District and a State Construct waiver from the Utah State Department of Environmental Quality Division of Drinking Water for the expansion of the water system and water lines serving the subdivision.

Review Agencies: The Weber County Engineering Division, the Weber Fire District and the Weber County Surveyor's Office have reviewed and approved the development. A condition of approval has been made part of the recommendations to ensure that any conditions of the review agencies are strictly adhered to.

Additional design standards and requirements: The applicant has been approved to have nightly rentals as an option allowed in the PRUD ordinance for the owners in Eden Escape Plat A. The proposal does not include lock out sleeping rooms so additional parking requirements will not be necessary. A note has been added to the final plat to declare this subdivision approved for nightly rentals.

Tax clearance: The 2017 property taxes have been paid in full. The 2018 property taxes will be due in full on November 30, 2018.

Planning Commission Recommendation

The Ogden Valley Planning Commission recommends approval of the final plat of Eden Escape Plat A part of Fairways at Wolf Creek PRUD. This recommendation for approval is subject to all review agency requirements and is based on the following findings:

1. The proposed subdivision conforms to the Ogden Valley General Plan.
2. The proposed subdivision complies with the applicable County ordinances.
3. The locations, lot area, width, yard, height and coverage regulations proposed are acceptable as shown on the final subdivision.

Exhibits

- A. Eden Escape Plat A
- B. Improvement Guarantee Agreement

Location Map



Exhibit B-Improvement Guarantee Agreement

**WEBER COUNTY
IMPROVEMENTS GUARANTEE AGREEMENT**

THIS AGREEMENT (herein Agreement) is entered into this 11th day of September, 2018,

******* PARTIES *******

APPLICANT: RKW 96 LLC

a(n): Limited Liability Company (corporation, limited liability company, partnership, individual)

address: 5200 South Highland Drive Suite #102 City: Salt Lake City State: UT zip: 84117

telephone: (801)673-5630

"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 Eden Escape Plat A

(description or name of Project)

located at 4200 N. Sunrise Drive Eden, UT 84310

(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 A, 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 2 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: 50-158627,

Financial Institution: Capital Community Bank Commercial Banking Group,

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 \$1,008,483.74 (herein the "Proceeds"), and is made a part of this Agreement as Exhibit B (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 1 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.

WHEREUPON, the parties hereto have set their hands the day and year first above written.

COUNTY

By: _____
Commission Chair

Date

ATTEST: _____
County Clerk

Date:

APPROVED AS TO CONTENT:

By _____
Planning Division Director

Date

By _____
County Engineer

Date

By _____
County Treasurer

Date

APPROVED AS TO FORM:

By _____
County Attorney

Date

APPLICANT

By: _____
Applicant Signature Date

Title: _____

APPLICANT NOTARIZATION

COMPLETE ONLY IF APPLICANT IS A LIMITED LIABILITY COMPANY

State of _____)
:ss
County of _____)

On this _____ day of _____, 20____, personally appeared before me
_____ *[name of person(s)]*, whose identity is personally known
to me or proved to me on the basis of satisfactory evidence, and who affirmed that he/she is the _____
_____ *[title]*,
of _____ *[name of LLC]*, limited liability company,
by authority of its members or its articles of organization, and he/she acknowledged to me that said
limited liability company executed the same.

Notary Public

Exhibit A: County Engineer-Approved Cost Estimate

Eden Escape Plat A Financial Guarantee

Description	Unit	Unit Price	Qty	Amount
MOBILIZATION				\$45,000.00
Mobilization	LS	\$45,000.00	1	\$45,000.00
EARTHWORK				\$93,127.50
Clear and Grub, haul off vegetation	SF	\$0.04	138,500	\$5,540.00
Windrow Topsoil at edges of slopes	CY	\$2.85	1,735	\$4,944.75
Stockpile Excess Topsoil	CY	\$6.40	3,395	\$21,728.00
Roadway Excavation	CY	\$5.80	1,450	\$8,410.00
Embankment Fill	CY	\$5.80	8,200	\$47,560.00
Topsoil Replacement from windrow	CY	\$2.85	1,735	\$4,944.75
EROSION CONTROL				\$9,100.00
Silt Fence	LF	\$1.75	1,300	\$2,275.00
SWPPP Management and Maintenance	LS	\$3,700.00	1	\$3,700.00
Stabilized Construction Entrance	EA	\$1,560.00	1	\$1,560.00
SWPPP (plan, permit, signage, inspections)	LS	\$1,025.00	1	\$1,025.00
Inlet Protection	EA	\$90.00	6	\$540.00
SEWER				\$201,782.30
8" SDR-35 PVC Pipe	LF	\$59.60	774	\$46,130.40
12" Sewer Pipe	LF	\$65.65	846	\$55,539.90
4' Concrete Manhole	EA	\$4,370.00	13	\$56,810.00
5' Concrete Manhole	EA	\$4,656.00	2	\$9,312.00
Sewer Lateral (8" Main)	EA	\$1,950.00	7	\$13,650.00
Sewer Lateral (12" Main)	EA	\$2,260.00	9	\$20,340.00
WATER				\$117,256.50
8" DIP CL-51 Pipe	LF	\$35.15	1,310	\$46,046.50
8" Bends & Tees	EA	\$860.00	9	\$7,740.00
8" Gate Valve	EA	\$2,640.00	4	\$10,560.00
Fire Hydrant	EA	\$6,600.00	3	\$19,800.00
Air/Vac Valve	EA	\$4,100.00	1	\$4,100.00
1" Water Service Lateral	EA	\$1,770.00	16	\$28,320.00
Connect to existing main w/ fittings	EA	\$690.00	1	\$690.00
STORM SEWER				\$66,946.20
Rip Rap Placement- storm drain outfalls	CY	\$147.00	10	\$1,470.00
15" RCP culvert	LF	\$40.25	442	\$17,790.50
24" RCP culvert	LF	\$48.15	78	\$3,755.70
36" RCP culvert	LF	\$93.25	80	\$7,460.00
15" Concrete Flared End Section	EA	\$575.00	2	\$1,150.00
24" Concrete Flared End Section	EA	\$670.00	1	\$670.00
36" Concrete Flared End Section	EA	\$1,740.00	2	\$3,480.00
Drainage Ditch with erosion blanket	LF	\$6.40	1,900	\$12,160.00
Curb Inlet, single grate	EA	\$2,955.00	1	\$2,955.00
Curb Inlet, triple grate	EA	\$4,220.00	2	\$8,440.00
4'x4' Area Inlet	EA	\$2,045.00	1	\$2,045.00
4' Storm Drain Manhole	EA	\$2,785.00	2	\$5,570.00
IRRIGATION				\$107,221.75
8" PVC C900 Purple Pipe	LF	\$26.25	2,143	\$56,253.75
8" Gate Valve	EA	\$1,840.00	5	\$9,200.00
8" Bends/Fittings	EA	\$825.00	10	\$8,250.00
2" Service	EA	\$1,685.00	18	\$30,330.00
2" Drain with Valve	EA	\$3,188.00	1	\$3,188.00
UTILITY CONDUITS / TRENCHING				\$57,509.10
Shared trenching for mult. conduit	LF	\$7.50	2,877	\$21,577.50
3" PVC Electrical Conduit	LF	\$4.80	2,877	\$13,809.60
3" Fiberglass 90-deg sweeping elbow	EA	\$124.00	50	\$6,200.00
6" PVC Electrical Conduit	LF	\$6.80	1,400	\$9,520.00
6" Fiberglass 90-deg sweeping elbow	LF	\$218.00	12	\$2,616.00
4" Gas/Comm sleeves	LF	\$14.35	120	\$1,722.00
8" Gas sleeves	LF	\$17.20	120	\$2,064.00
ROADBASE & STRUCTURAL FILL				\$52,290.15
Aggregate Base Course (roads)	TON	\$23.65	2,211	\$52,290.15
PAVING/ASPHALT				\$50,157.80
Paving Mobilization	LS	\$1,400.00	1	\$1,400.00
Asphalt Import and Place (roads)	TON	\$65.80	741	\$48,757.80
PAVEMENT MAINTENANCE				\$10,538.40
Type A Chip Seal with Fog Coat	SY	\$2.40	4,391	\$10,538.40
CURB & GUTTER				\$58,373.70
APWA Type G, 24" rolled gutter (roads)	LF	\$18.10	2,877	\$52,073.70
6" concrete waterway	LF	\$78.75	80	\$6,300.00
LANDSCAPING (COMMON AREAS)				\$92,500.00
Formal Landscape (Sod, Trees, Sprinklers)	SF	\$3.00	27,500	\$82,500.00
Native Grass/Wildflower Seeding	SF	\$0.25	40,000	\$10,000.00
SUBTOTAL				\$916,803.40
10% WARRANTY				\$91,680.34
TOTAL				\$1,008,483.74

Exhibit B: Letter of Credit



IRREVOCABLE STANDBY LETTER OF CREDIT

September 5, 2018
Beneficiary
Weber County
2380 Washington BLVD
Ogden, Utah 84401

Applicant
RKW 96 LLC
5200 South Highland Drive Suite #102
Salt Lake City, Utah 84117

LOC Number: 50-158627
Project Name: Eden Escape Plat A
4200 N Sunrise Drive
Eden, Utah 84310
Amount (USD): \$1,008,483.74
Expiration Date: September 5, 2020

WEBER COUNTY:

We hereby establish this Irrevocable Standby Letter of Credit No. 50-158627 (the "LOC"), in favor of Weber County (the "County"), for the Account of RKW 96 LLC up to an aggregate amount of One Million Eight Thousand Four Hundred Eighty-Three U.S. Dollars and Seventy-Four Cents (\$1,008,483.74) available by your draft at sight drawn on us. This LOC is issued to secure the completion and installation of improvements (the "Improvements") required under that certain Improvements Guarantee Agreement (the "Agreement") made between RKW 96 LLC and the County dated September 11, 2018.

Each draft must be accompanied by (i) a certification from the Weber County Engineer that RKW 96 LLC is in default under the terms and conditions set forth in the Agreement (ii) by this original LOC along with originals of all amendments; and (iii) by a sight draft signed on the LOC have not exhausted the full amount of credit.

Each sight draft drawn under this LOC must state "Drawn Under Capital Community Bank Irrevocable Standby Letter of Credit No. 50-158627, dated September 5, 2018, to satisfactorily complete such improvements as are required by the Improvements Guarantee Agreement between RKW 96 LLC and the County, dated September 11, 2018." Capital Community Bank is entitled to rely upon the certification from Weber County Engineer and will have no obligation to independently verify the accuracy thereof.

9080 Village Shop Drive, Sandy, Utah 84094
Tel: 801.727.0100 • Fax: 801.727.0103



Irrevocable Standby Letter of Credit # 50-158627

September 5, 2018

Page 2

Partial drawings and multiple drawings are permitted. Each time the County inspects and approves a portion of the required improvements, the amount eligible to be drawn under this Letter of Credit will be reduced by the value assigned by the County to the approved improvements.

This LOC shall expire Twenty-four (24) months from the date hereon unless the County shall have released RKW 96 LLC from all further liability hereunder upon the timely and satisfactory completion of the Improvements.

The proceeds of said drafts will be retained and used by the County to meet any expenses arising out of the satisfactory completion of the Improvements identified in the Agreement. Upon the final completion and acceptance of the performance required under the Agreement, there will be refunded to us by the County any balance remaining after application by the County of the sums necessary from the proceeds of the draft(s) to pay costs incurred in satisfactorily completing the Improvements.

This LOC is issued and shall be subject to the International Standby Practices (ISP98) or any subsequent revision thereto, to the extent that it does not conflict with Utah Code Annotated Sections 70A-5-101 *et seq.* (1953) as amended). Jurisdiction for resolution of disputes arising under this LOC lies in the courts of Salt Lake County, Utah.

We hereby agree with drawers, endorsers and bona fide holders of drafts that all drafts drawn under and in compliance with the terms of this LOC shall be honored by us and payment made no later than three (3) business days after delivery of documents as specified on or before the expiration date of this LOC.

In the event Capital Community Bank is placed into receivership, becomes insolvent, or files for bankruptcy, the County shall be immediately notified. The County may consider this a default event and require the issuance of a new irrevocable standby letter of credit.

Capital Community Bank

By: 

Jhae L Smith

Title: SVP, Commercial Banking Group

Memorandum

To: John Bond, Weber County
From: Russ Watts
Date: 09/05/2018
Re: Letter of Credit Security on Eden Escape Plat A

John,

As we discussed recently, we propose to provide a financial guarantee for Eden Escape Plat A in the form of a letter of credit from Capital Community Bank in the amount of \$1,008,483.74 (\$916,803.40 plus 10% warranty of \$91,680.34). Upon final inspection and approval by the County (anticipated October 2018), the letter of credit would be reduced to the 10% warranty amount of \$91,680.34 for the subsequent warranty period. Of the \$91,680.34 warranty amount, we propose to provide 30% in cash to Weber County and 70% as a remaining letter of credit. This would reduce the exposure of Weber County and we would follow up on the final inspection a year later to release the balance of the funds and meet all the requirements of Weber County.

We would respectfully request your review and approval of this approach and notify the county commission to approve the recording of our Eden Escape Plat A.

Russ Watts