

10218800

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

REIMBURSEMENT AGREEMENT
McArthur Homes - Amberley Condominiums

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09/11/2007 01:48 PM \$0.00
Book - 9513 Pg - 9303-9314
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
WEST JORDAN CITY
8000 S REDWOOD RD
WEST JORDAN UT 84088
BY: SLR, DEPUTY - WI 12 P.

10218800

West Jordan

This Agreement is entered into this 31 day of JULY, 2007, by and between McArthur Homes at Legacy Towns, LC, a Utah limited liability company ("Developer") and the City of West Jordan, a municipality and political subdivision of the State of Utah (the "City").

RECITALS

WHEREAS, Developer desires to develop certain property located within the corporate boundaries of the City of West Jordan, Salt Lake County, Utah, as reflected in Exhibit "A" which is attached hereto and by this reference made a part hereof (the "Property"); and

WHEREAS, as a condition of development approval, Developer is required to and proposes to construct and install certain "Eligible Public Improvements" as defined in section 87-5-202 of the West Jordan Municipal Code; and

WHEREAS, The Parties agree that the Eligible Public Improvements are: lawfully required as a condition of development approval; reasonably anticipated to serve future development; located off-site or will create additional or excess capacity beyond the proportionate share attributable to Developer to reasonably service the proposed development at the City's adopted level of service standards; and

WHEREAS, the City has adopted a policy, as set forth in section 87-5-201 of the West Jordan Municipal Code, that the proportionate share of the cost for public improvements should be allocated to all the properties creating the need for or benefiting from the public improvements; and

WHEREAS, Developer desires to be reimbursed for a proportionate share of the costs associated with the construction and installation of the Eligible Public Improvements which are reasonably anticipated to provide benefits to neighboring and surrounding properties ("Benefited Properties"), the owners of which are not currently participating in the cost of such Eligible Public Improvements; and

WHEREAS, some of the Eligible Public Improvements are System Improvements, as defined in section 87-5-202 of the West Jordan Municipal Code, for which the Developer may receive partial reimbursement from Impact Fees collected by the City; and

WHEREAS, City and Developer desire to identify those Eligible Public Improvements that are System Improvements and to clarify the portion of such System Improvements for which reimbursement may be made available through Impact Fees; and

WHEREAS, reimbursements are authorized by the West Jordan Municipal Code section 87-5-201 for the purpose of implementing the policies stated therein, and City and Developer desire to enter into this Reimbursement Agreement that permits Developer to be reimbursed for a

Parcel 1: 21-30-151-002
Parcel 2: 21-30-101-003

proportionate share of the costs associated with the construction and installation of Eligible Public Improvements that benefit the Benefited Properties.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Agreement and are made a part hereof.
2. Developer's Obligations.
 - a. Developer shall, at its own expense and in accordance with the requirements of the West Jordan Municipal Code, Federal and State laws and regulations, approved engineering construction drawings, the requirements of the City Engineer, and all other conditions of development approval, construct and install or cause to be constructed and installed the Eligible Public Improvements identified in the attached Exhibits "B, C, and D" as "Eligible System Improvements" and "Eligible Projects Improvements," collectively referred to herein as "Eligible Public Improvements".
 - b. Developer shall, at its own expense, acquire necessary real property interests for the construction and installation of the Eligible Public Improvements and shall dedicate the acquired real property interests and Eligible Public Improvements to City, in a form approved and acceptable to the City Attorney.
 - c. Developer understands and agrees that Eligible Public Improvements will not be reimbursable unless they are approved by City in advance of development in accordance with City's ordinances, rules, regulations, and engineering standards and specifications.
 - d. Developer further understands and agrees that Eligible Public Improvements identified herein are the only improvements for which reimbursement will be made available with respect to the development of the Property, the legal description of which is set forth on Exhibit "A".
3. Cost Allocation and Collection from Benefited Properties for Eligible Project Improvements.
 - a. The Parties agree that the properties reasonably anticipated to benefit from the construction and installation of the Eligible Project Improvements (Partially Reimbursable from Benefited Properties) are limited to those Benefited Properties identified in Exhibit "B", and cost allocation and collection shall be limited to only the Benefited Properties.
 - b. City shall allocate costs to the Benefited Properties as set forth in Exhibit "B". The allocation is based on: frontage and other fair and equitable criteria.
 - c. City shall require owners of the Benefited Properties that seek City approval to develop, subdivide or build, to pay to the City the appropriate allocated costs identified herein, prior to

granting any development, subdivision, conditional use, or site plan approval and prior to the City issuing any building permit, with respect to the Benefited Properties. The parties acknowledge, understand and agree that: (i) the City has no duty to collect and is not responsible to enforce this Reimbursement Agreement against any Benefited Property or person; and (ii) the City is not responsible or liable if an approval, permit or action is granted inadvertently to a Benefited Property or person, unless done intentionally and by fraud.

4. Reimbursement Payments.

a. Upon collection of the allocated costs from the Benefited Properties as set forth herein, City shall pay the collected amount as a Reimbursement Payment to Developer. Notwithstanding anything in this Reimbursement Agreement to the contrary, the City shall have no obligation to make any Reimbursement Payment to Developer until the allocated costs are actually received by City. The parties acknowledge, understand and agree that: (i) the City is not directly responsible or liable for any Reimbursement Payment to Developer, other than to account for sums received; (ii) the City is not responsible in the event this Reimbursement Agreement is determined by a court of competent jurisdiction to be unenforceable.

b. Impact fee reimbursements for System Improvements identified in Exhibit "C and D" shall be paid in accordance with Section 89-6-413 of the West Jordan Municipal Code, attached hereto as Exhibit "E" and incorporated herein by reference.

c. No reimbursement, whether from Benefited Properties or from impact fees, shall be due to Developer until:

i) The applicable Eligible Public Improvements have been fully installed, inspected, and approved by the City, and the real property and Public Improvements have been dedicated to the City by lawful conveyance through plat, warranty deed or other method acceptable to the West Jordan City Attorney;

ii) Developer has submitted the documentation required by this Reimbursement Agreement evidencing actual costs of the Eligible Public Improvements; and

iii) Such reimbursement is required by the terms of this Reimbursement Agreement and the West Jordan Municipal Code.

5. Reimbursement Amount.

a. Maximum Reimbursement.

i) The maximum reimbursement for the Eligible Public Improvements shall be the lesser of: (1) the actual costs of Eligible Public Improvements as evidenced by the documentation submitted in accordance with the terms of this Reimbursement Agreement, or (2) the estimated costs of the Eligible Public Improvements as set forth in

the attached Exhibits, or as said sum is amended under the terms of this Reimbursement Agreement.

ii) "Actual Costs" means the costs actually incurred or expended to construct or install the Eligible Public Improvements, which costs shall include the cost of the real property, and disbursements to general contractors, engineers, surveyors, construction management and inspection, and land planners. Actual Costs shall not include financing costs, interest or expenses incurred or expended for the acquisition of real property, except the purchase price.

iii) The maximum reimbursement for Eligible Public Improvements, shown in the Exhibits, are estimates only and shall, if actual costs are less, be decreased in accordance with actual costs. Estimated costs shall not be increased, except by written amendment to this Reimbursement Agreement, in accordance with the amendment provisions set forth herein. In order for an amendment to be considered by City, change orders and similar situations and circumstances must have been pre-approved, in writing, by the City.

iv) The maximum reimbursement for acquisition of real property interests shall be 115% of a City-approved MAI-certified appraisal, provided to City at Developer's expense. In no event shall the reimbursement for real property acquisition exceed the lesser of: (1) the actual cost of the real property; or (2) 115% of the appraisal.

v) Developer shall provide to the City documentation, acceptable to the City Attorney, demonstrating the actual costs incurred by the Developer for the acquisition, construction and installation of Eligible Public Improvements, including acquisition of real property interests. Documentation shall include but not be limited to: receipts, checks, vouchers, bills, statements, bid documents, change orders, payment documents, and all other information necessary for the City to determine the actual costs incurred. Developer's failure to submit the required documentation shall result in rejection of the undocumented claimed amount.

b. Interest. No interest shall be included in the amount of the reimbursement, and no interest shall be paid to developer by the City or any other person on any amounts due under this Agreement.

6. Ownership of Eligible Public Improvements. City shall own the Eligible Public Improvements in fee simple absolute, together with the lands and rights-of-way dedicated to the City. Ownership shall be with the City upon: (i) completion of construction of the Eligible Public Improvements by Developer; (ii) completion of applicable warranty periods; and (iii) inspection, approval and written acceptance by the City. The City will assume responsibility for all maintenance, repair and replacement of the Eligible Public Improvements once they are completed by Developer and accepted by the City, subject to any applicable warranty periods.

7. Term of Agreement. This Reimbursement Agreement shall terminate ten years following the effective date of the Reimbursement Agreement or at such earlier time as the cumulative

reimbursement amount reaches the maximum reimbursement. No reimbursement shall be due or payable after said ten year period.

8. Effect of Agreement. Nothing in this Reimbursement Agreement shall be construed to relieve Developer of any obligations imposed on Developer by Federal, State or local laws, ordinances, regulations, or standards.

9. Waiver and Covenant Not to Sue. Developer specifically agrees to accept the reimbursement specified herein as full and final payment of all claims against the City or any Benefited Property. Developer hereby waives any rights or claims against the City for reimbursement of any kind or source other than as set forth herein. Developer further agrees to hold City harmless from any and all costs associated with this Reimbursement Agreement, including the allocated costs, if any, which are not collected from the Benefited Properties.

10. Assignment. Neither the Reimbursement Agreement nor any of its provisions, terms or conditions may be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities and without the prior written consent of City.

11. Entire Agreement. This Reimbursement Agreement contains the entire agreement and understanding of the parties with respect to reimbursement to Developer for the Eligible Public Improvements and supersedes all prior written or oral agreements, representations, promises, inducements, or understandings between the parties with regard to any reimbursements to Developer from the City.

12. Binding Effect. This Reimbursement Agreement shall be binding upon the parties hereto and their respective officers, employees, representatives, agents, members, successors, and assigns.

13. Validity and Severability. In the event a court, governmental agency, or regulatory agency with proper jurisdiction determines that any provision of this Agreement is unlawful, that provision shall terminate. If a provision is terminated, but the parties can legally, commercially, and practicably continue to perform this Agreement without the terminated provision, the remainder of this Agreement shall continue in effect.

14. Amendment. This Agreement may be amended only in a writing signed by the parties hereto.

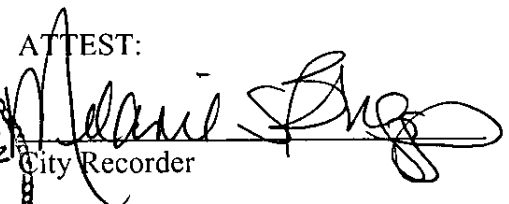
15. Controlling Law, Jurisdiction and Venue. This Reimbursement Agreement shall be governed by the laws of the State of Utah. Venue shall be in Salt Lake County, Utah.

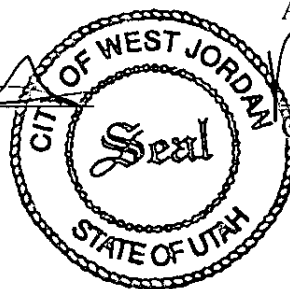
IN WITNESS WHEREOF, the parties hereto have executed this Reimbursement Agreement as of the day and year first hereinabove written.

CITY:

By: 
Name: David B. Newton, Mayor

ATTEST:


City Recorder



APPROVED AS TO LEGAL FORM
West Jordan City Attorney

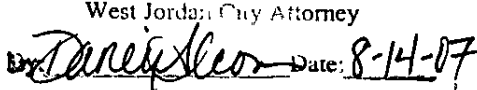
By:  Date: 8-14-07

Exhibit A

Overall Property Description of Amberley Condos

PART OF THE NORTHWEST QUARTER OF SECTION 30 TOWNSHIP 2 SOUTH, RANGE 1 WEST SALT LAKE BASE AND MERIDIAN DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT WHICH LIES ON THE SOUTH RIGHT OF WAY LINE OF 7000 SOUTH STREET. WHICH POINT IS N89°47'33"E 379.76 FEET, AND S00°12'27"E 48.72 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 30. THENCE S89°56'54"E 509.52 FEET ALONG SAID 7000 SOUTH STREET RIGHT OF WAY LINE TO D&RGW RAILROAD BOUNDARY LINE; THENCE ALONG SAID RAILROAD BOUNDARY THE FOLLOWING TWO (2) COURSE: (1) S19°48'47"E 629323 FEET TO CURVE THE CENTER OF WHICH BEARS S69°25'05"W A DISTANCE OF 3756.93 FEET; (2) ALONG SAID CURVE SOUTHEASTERLY TO THE RIGHT THROUGH A CENTRAL ANGLE OF 03°00'59" A DISTANCE OF 197.79 FEET; THENCE N89°56'54"W 573.30 FEET; THENCE N00°08'14"W 485.65 FEET; THENCE N89°56'51"W 212.27 FEET; THENCE N00°08'14"W 293.00 FEET TO THE POINT OF BEGINNING.
CONTAINS: 9.23 ACRES

PARCEL 1: 21-30-101-002

PARCEL 2: 21-30-101-003

Exhibit B
Eligible Project Improvements

70th SO PARCEL 2130101004 AND 2130101005 COST						
GRAND TOTAL		\$57,187				
Category	Item	Qty	Units	Cost Ea.	Total	SubTotal
132 SOIL TESTING						\$1,500
	ROAD TESTS	1	LS	\$1,500.00	\$1,500	
	SITE TESTS		EA			
146 ROUGH CUT ROADS						\$3,209
	A.C. CUTTING	311	LF	\$1.00	\$311	
	CONC. CUTTING		LF			
	GRADING	644	CY	\$4.50	\$2,898	
161 CURB & GUTTER						\$9,019
	HIGH BACK CURB/GUTTER	311	LF	\$15.00	\$4,665	
	ROLLED CURB/GUTTER		LF			
	4" walk 6" concrete over 6" base	311	LF	\$14.00	\$4,354	
	CURB CUTS		LF			
163 PAVING						\$43,459
	6" ASP/8" BASE	6686	SF	\$4.25	\$28,416	
	1" OVERLAY	6686	SF	\$1.25	\$8,358	
	FABRIC	6686	SF	\$1.00	\$6,686	

Legal Description for Bowler Properties

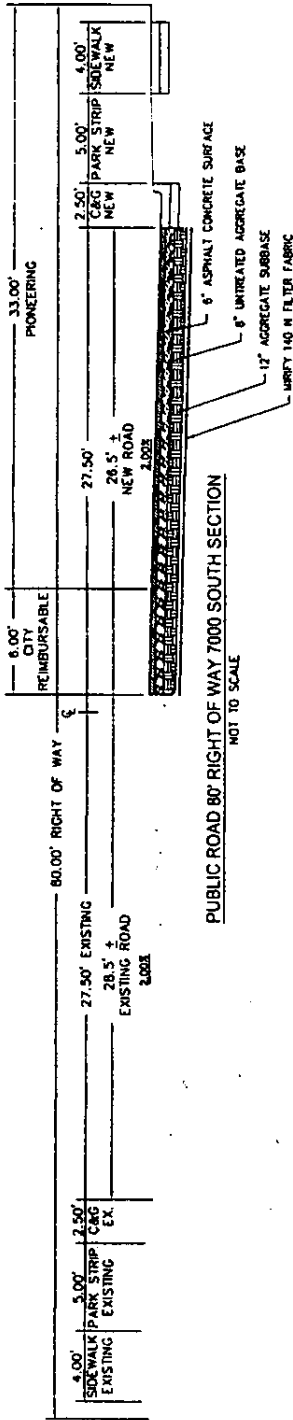
BEGINNING AT A POINT NORTH 00°08'29" WEST 2612.687 FEET FROM THE WEST QUARTER CORNER OF SECTION 30, TOWNSHIP 2 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, (SAID POINT BEING SOUTH 00°08'29" EAST 47 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 30, AND ALSO BEING THE ON THE SOUTHERLY LINE OF THE PROPOSED 70TH SOUTH STREET); AND RUNNING THENCE ALONG THE PROPOSED SOUTHERLY LINE OF 70TH SOUTH STREET SOUTH 89°57'09" EAST 379.832 FEET TO THE WESTERLY LINE OF SAID SECTION 30; THENCE NORTH 00°08'29" WEST 293.00 FEET MORE OR LESS TO THE SOUTHERLY LINE OF THE PROPOSED 70TH SOUTH STREET AND THE POINT OF BEGINNING.

PARCEL IDENTIFICATION NO'S 21-30-101-004 AND 21-30-101-005

Exhibit C
Eligible System Improvements

70th SO REIMBURSABLE FOR IMPACT FEES						
GRAND TOTAL		\$12,702				
Category	Item	Qty	Units	Cost Ea.	Total	SubTotals
132 SOIL TESTING						\$195
	ROAD TESTS	1	LS	\$195.00	\$195	
	SITE TESTS		EA			
146 ROUGH CUT ROADS						\$378
	A.C. CUTTING		LF	\$1.00		
	CONC. CUTTING		LF			
	GRADING	84	CY	\$4.50	\$378	
161 CURB & GUTTER						
	HIGH BACK CURB/GUTTER		LF	\$15.00		
	ROLLED CURB/GUTTER		LF			
	4' walk 6" concrete over 6" base		LF	\$14.00		
163 PAVING	CURB CUTS		LF			
						\$12,129
	6" ASP/8" BASE	1866	SF	\$4.25	\$7,931	
	1" OVERLAY	1866	SF	\$1.25	\$2,333	
	FABRIC	1866	SF	\$1.00	\$1,866	

EXHIBIT D



6' Paid by Impacted Fees

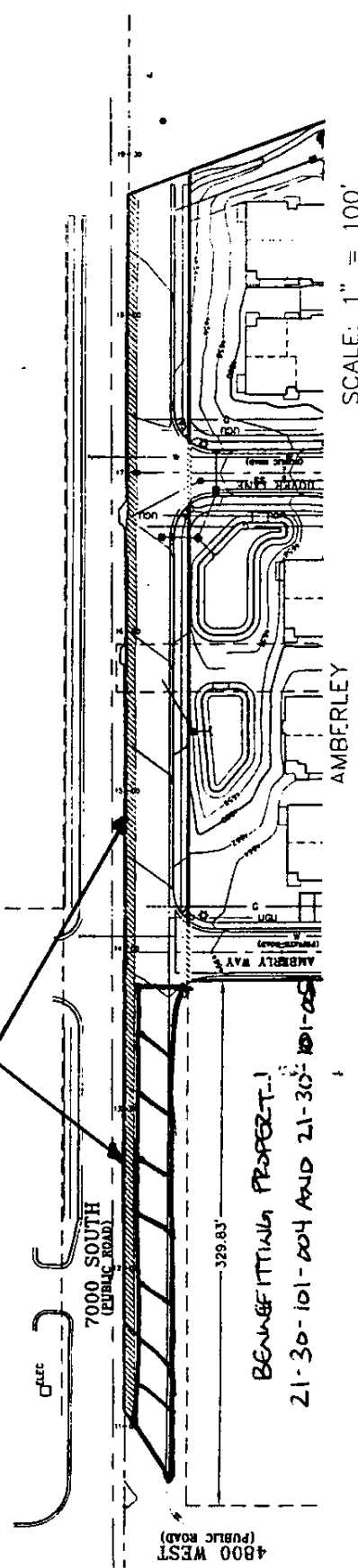


EXHIBIT E

Sec. 89-6-413. Reimbursement for System Improvements.

(a) Improvements specifically listed but not yet built in the City's Capital Facilities Plan (CFP) may be constructed by the developer out of the CFP-planned sequence if such construction is acceptable to the City and does not create unreasonable collateral hardships to the infrastructure system. The developer may request a reimbursement agreement, pursuant to provisions of Sections 87-5-201 through 87-5-208 of the West Jordan Municipal Code, with the City to recover eligible costs which shall not exceed the costs upon which the impact fees were established. The reimbursement agreement shall establish a priority for the included improvements, and eligible costs may be reimbursed from impact fees collected, after higher priority projects in the respective CFP have been adequately funded.

(b) In no event shall the reimbursement exceed the actual cost of public improvements.

(c) *Storm drainage connection* . Payment of a storm drainage impact fee or dedication of land in lieu thereof does not relieve the developer of the responsibility to provide the necessary storm drainage improvements between a development and the nearest defined natural drainage channel or other existing storm drainage improvements capable of handling runoff from within the development. Such improvements shall be constructed in accordance with City and county flood control master plans.

(Enacted by Ord. No. 03-40, 07-15-2003; Ord. No. 03-64, (a)&(b), 10-21-2003)