



W2610607

C 2012-230

WEBER COUNTY

ER 2610607 PG 1 OF 8
ERNEST D ROWLEY, WEBER COUNTY RECORDER
DEC-12 348 PM FEE \$1.00 DEP SGC
REC FOR: WEBER COUNTY CLERK/AUDITOR

ZONING DEVELOPMENT AGREEMENT AMENDED

PARTIES: The parties to this Zoning Development Agreement (Agreement) are Howard Schmidt D.B.A. Eden Valley Development LLC and John Lewis D.B.A. Capon Capital LLC ("the petitioner") and Weber County Corporation ("the County").

EFFECTIVE DATE: The effective date of this Agreement will be the date that rezoning approval is granted as outlined below by the Weber County Commission ("the Commission").

RECITALS: Whereas, the petitioner seeks to rezone property generally located in the East Half of Section 27, Township 7 North, Range 1 East, Salt Lake Base & Meridian within the unincorporated area of Weber County, Utah from Residential Estates Zone RE-15 and Open Space Zone O-1 to Residential Estate RE-15 zone and from Agricultural Valley Zone AV-3, Residential Estates Zone RE-15 and Open Space Zone O-1 to Forest Residential FR-3 Zone for the purpose of: Constructing 106 single family dwelling units and 24 two family dwelling unit which property consists of approximately 178 acres and is more particularly described on EXHIBIT A attached hereto and incorporated herein by this reference ("the property"); and,

WHEREAS, the County seeks to promote the health, welfare, safety, convenience and economic prosperity of the inhabitants of the County through the establishment and administration of Zoning Regulations concerning the use and development of land in the unincorporated area of the County as a means of implementing the adopted Land Use General Plans of all or part of the County; and

WHEREAS, petitioner has requested that certain property be rezoned for purposes of allowing him or his designees to develop the property in a manner which has been outlined to the Planning Commission; and

WHEREAS, the petitioner considers it to his advantage and benefit for the County to review his petition for rezoning based upon having prior knowledge of the development that is proposed for the property so as to more completely assess its compatibility with the County's General Plan and for the area and the existing land use surrounding the property to be rezoned as outlined in Exhibit A; and

WHEREAS, the County is desirous of rezoning the property for the purpose of developing the property in the manner outlined to the county but does not feel that the property should be rezoned unless the development that the petitioner contemplates is commenced and completed on the property within an agreed upon reasonable time; and

WHEREAS, it is in the best interests of both the petitioner and the County that in the event the petitioners project is not commenced, constructed and completed within a reasonable time that the zoning of the parcel described in Exhibit A be rezoned back to the zoning that existed prior to granting petitioners initial rezoning request; and

WHEREAS, the petitioner has acknowledged that, due to the lack of progress on the approved project, he will be in default of the previously approved Zoning Development Agreement; and

WHEREAS, the petitioner has requested that the County extend the expiration date of the previously approved Zoning Development Agreement recorded in the Office of the Weber County Recorder as entry number 2184604; and

WHEREAS, the County Commission, after receiving a recommendation from the Ogden Valley Planning Commission, has determined that proposed development continues to conform to the goals and objectives of the Ogden Valley General Plan and continues to be a benefit to both parties involved;

NOW THEREFORE, for good and valuable consideration in receipt of which is hereby acknowledged and accepted by both parties, the parties hereto mutually agree and covenant as follows:

Zoning Development Agreement

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1. The County will rezone the property described in Exhibit A from Residential Estates Zone RE-15 and Open Space Zone O-1 to Residential Estate RE-15 Zone and from Agricultural Valley Zone AV-3, Residential Estates Zone RE-15 and Open Space Zone O-1 to Forest Residential FR-3 Zone for the purpose of allowing the petitioner to develop his property in conformance with the approved concept development plan.
2. The petitioner will develop the subject property based on the concept development plan attached hereto and marked as Exhibit B. The attached plan may be refined and modified but the general concept of the plan will not be changed without prior formal approval of the County. The petitioner has begun construction on the designated project described in Exhibit B of the original zoning development agreement and has until February 2017 to complete the project.
3. Petitioner acknowledges that if the project has not begun or has not been completed within the time frames outlined above that he will request that the property be rezoned from a Residential Estates Zone RE-15 and Open Space Zone O-1 to Residential Estate RE-15 zone and from Agricultural Valley Zone AV-3, Residential Estates Zone RE-15 and Open Space Zone O-1 to Forest Residential FR-3 Zone and this document will serve as his request that the property be rezoned by the County. Petitioner understands that the County's granting of his rezoning petition is contingent upon him completing the project substantially as outlined in Exhibit B and within the time frame outlined in this agreement.
4. The petitioner agrees that only uses which fall within the general use types included in the approved Concept Development Plan and which comply with the Zoning Ordinance provisions, will be approved on the petitioned for property as part of a more specific and more detailed version of the approved Concept Development Plan. No other uses will be approved until or unless this Agreement and the approved Concept Plan are amended or voided.
5. The responsibilities and commitments of the petitioner and the County as detailed in this document, when executed shall constitute a covenant and restriction running with the land and shall be binding upon the petitioner/owner his assignees and successors in interest and shall be recorded in the Office of the Weber County Recorder.
6. Both parties recognize the advantageous nature of this Agreement which provides for the accrual of benefits and protection of interests to both parties.
7. The County will issue land use permits for only those uses determined to be within the general land use types listed on the Concept Development Plan and more specifically on more detailed development plans for the project or major phase thereof submitted to and approved by the County.
8. The following conditions, occurrences or actions will constitute a default by the petitioner, his assigns or successors in interest:
 - a. failure to present a detailed development plan including proposed uses for the project, or a major phase thereof, gain County approval and obtain land use and building permits and complete construction within the time periods specified in this Agreement.
 - b. disposing of the property for any other purpose than that approved by this Agreement, the concept development plan and general uses and any subsequent more detailed plans and uses approved by the County.
 - c. a written petition by the petitioner, his assigns or successors in interest, filed with the County seeking to void or materially alter any of the provisions of this Agreement.

9. In the event that any of the conditions constituting default by the petitioner, his assigns or successors in interest, occur, the County finds that the public benefits to accrue from rezoning as outlined in this Agreement will not be realized.

In such a case, the County shall examine the reasons for the default and lack of progress or proposed major change of plans, and either approve an extension of time or major change or the concept plan or initiate steps to revert the zoning designation to its former zone.

10. The parties may amend or modify the provisions of this Agreement, the concept development plan and list of use types only by written instrument and after considering the recommendation of the County Planning Commission which may hold a public hearing to determine public feeling on the proposed amendment or modification if deemed warranted.

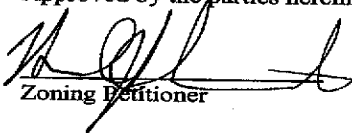
11. This Agreement with any amendments shall be in full force and effect until all construction and building occupancy has taken place as per approved development plans or until the property covered herein has been reverted to its former zone designation as a result of default.

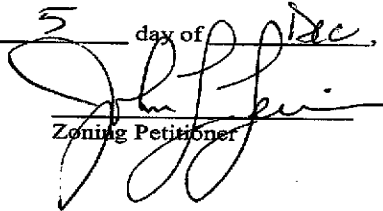
12. Nothing contained in this Agreement constitutes a waiver of the County's sovereign immunity under any applicable state law.

13. In the event that legal action is required in order to enforce the terms of this agreement, the prevailing party shall be entitled to receive from the faulting party any costs and attorney's fees incurred in enforcing this agreement from the defaulting party.

14. This agreement constitutes the entire agreement between the parties. No changes or alternatives may be made in this agreement except in writing signed by both parties.

Approved by the parties herein undersigned this 5 day of Dec, 2012


Zoning Petitioner


Zoning Petitioner

INDIVIDUAL ACKNOWLEDGMENT

State of Utah)

ss

County of Weber)

On the

11th

day of

December

A.D. 2012

personally appeared before me _____

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

Notary Public

Residing at: _____, Utah

CORPORATE ACKNOWLEDGMENT

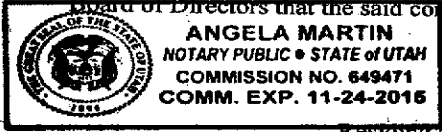
State of Utah)

ss

County of Weber)

On the 5 day of Dec A.D. 2012

personally appeared before me John Lewis duly sworn, did say that he she is the managing member of Lapon Capital LLC corporation which executed the foregoing instrument, and that said instrument was signed in behalf of said corporation by authority of a Resolution of its Board of Directors that the said corporation executed the same.



[Signature]
Notary Public

Residing at: Ogden, Utah

CORPORATE ACKNOWLEDGMENT

State of Utah)

ss

County of Weber)

On the 5 day of Dec A.D. 2012

personally appeared before me Howard Schmidt duly sworn, did say that he she is the managing member of Eden Valley Development LLC corporation which executed the foregoing instrument, and that said instrument was signed in behalf of said corporation by authority of a Resolution of its Board of Directors that the said corporation executed the same.



[Signature]
Notary Public

Residing at: Ogden, Utah

APPROVED AS TO FORM:

[Signature] 12/10/12
Weber County Attorney Date

APPROVED:

[Signature] 12-11-2012
Chairperson, Weber County Commission Date

ATTEST:

Zoning Development Agreement

Ricky D. Hatch
Weber County Clerk

12/4/12
Date

Documents Attached:

- Exhibit A - Property description of area petition for rezoning
- Exhibit B - New open space plan showing the area to be recreational open space
- Exhibit C - Open Space Commitment Letter

Zoning Development Agreement

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Exhibit A

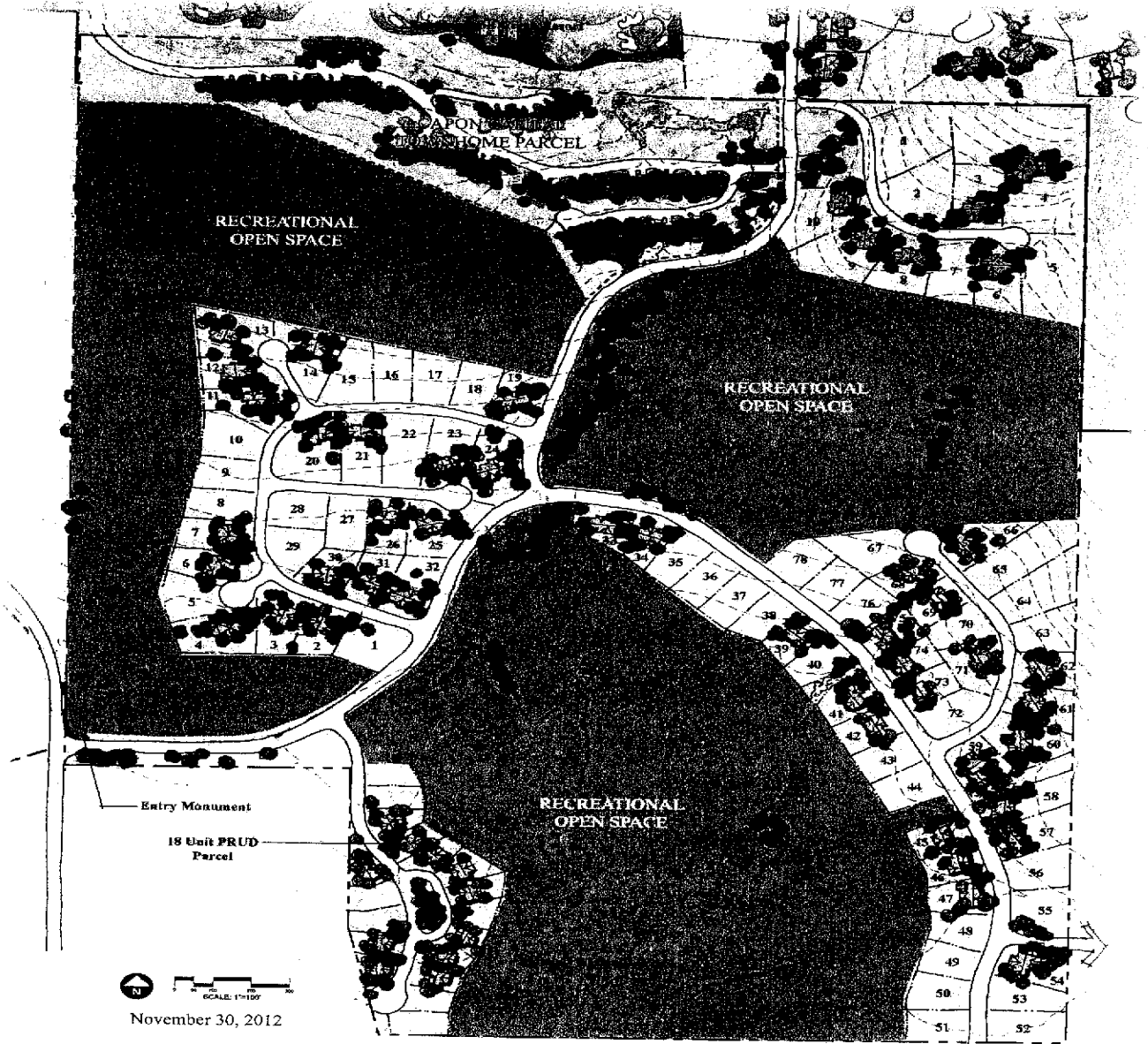
22-021-0102^W, 22-021-0061^{Pr}

A part of the East Half of Section 27, Township 7 North, Range 1 East, Salt Lake Base & Meridian beginning at a point on the South line of Elk Horn Subdivision Phase 3 said point being S. 00°27'53" W. along the section line 163.46 feet from the Northeast Corner of said Section 27, T7N, R1E, SLB&M; thence the following courses: S. 00°27'53" W 2484.48 feet along said section line to the east quarter corner; thence S 00°22'02" W 850.86 feet along the section line; thence N 89°37'27" W 1805.50 feet to the East line of Andersen Acres Subdivision; thence N 13°25'39" W 362.44 feet along the East line of Andersen Acres Subdivision; thence N 00°00'09" W 530.00 feet along the East line of Andersen Acres Subdivision and the extension of said subdivision; thence West 752.36 feet to the West line Of the East half of said Section 27; thence N 00°16'53" E 2423.21 feet along the West line Of the East half of said Section 27 to the North quarter corner of said section 27; thence S 89°09'42" E 738.12 feet along the North line of said section 27; thence S 68°46'53" E 378.92 feet; thence S 85°37'27" E 500.94 feet to the Southwest corner of Elk Horn Phase 2; thence S 89°07'48" E 1063.64 feet along the south line of Elk Horn Phase 2 to the point of beginning.

Contains: 7,770,295 sq. ft. / 178.38 acres

Eagles Landing

City of Creek Resort



November 30, 2012

November 27, 2012

EH 2610607 PG 8 OF 8

Dear Mr. Gentry and Members of the Ogden Valley Planning Commission,

RE: Open Space Commitment Letter

As Developers of Eagles Landing and the adjacent town home parcel, it has come to our attention that Weber County staff has concerns about our open space. As part of our desire to extend the current development agreement, we feel that now is a good time to address our intentions regarding our open space.

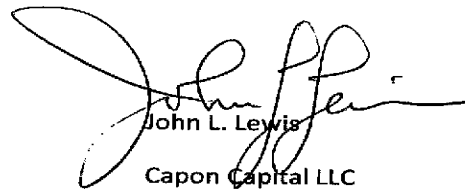
The current financial reality is that the feasibility of a golf course within our open space is not appropriate at this time. However, in the future, it is still our desire and vision to work with the county, our homeowners and futures owners of Wolf Creek Golf Course, to proceed with the plans to build an additional 9 holes. For now however, it is our full intention and commitment to maintain this open space in the natural state that currently exists.

Until such time as a golf course is practical, the HOAs will take responsibility for the maintenance of these open space parcels as part of their internal CCR's.



Howard J. Schmidt

Eden Valley development LLC



John L. Lewis

Capon Capital LLC