

E 2733318 B 5748 P 417-421  
RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
04/15/2013 12:52 PM  
FEE: \$1.00 Pgs: 5  
DEP RT REC'D FOR SOUTH WEBER CITY

**DEVELOPER'S SUBDIVISION AGREEMENT**  
**SOUTH WEBER CITY**

*D*

THIS AGREEMENT for the development of land (hereinafter referred to as this "Agreement") is made and entered into this 3<sup>rd</sup> day of April, 2013, between SOUTH WEBER CITY, a municipal corporation of the State of Utah, hereinafter referred to as "City", and D.R. HORTON, INC., a Delaware corporation, its Utah Division located at 12351 South Gateway Park Place, City of Draper, County of Salt Lake, State of Utah, hereinafter referred to as "Developer".

WHEREAS, Developer has presented to the South Weber City Planning Commission and the South Weber City Council a proposed final plat for the subdivision of, and construction of improvements on, certain land in South Weber City to be known as Cottonwood Cove Subdivision, Phases One through Four, Lots 01 through 156 and Parcel A; and *13-297-0101 -> 0119*

WHEREAS, said development plan indicates improvements to be made in access, streets, street lights, culinary water, secondary water, sewer, storm drain, and/or other utilities; and *13-298-0120 -> 0127*

WHEREAS, it is necessary in the interest of public welfare that improvements made be constructed in accordance with the specifications set forth in said plan and as provided by ordinances and requirements of City; and *13-299-0128 -> 0145*

WHEREAS, in accordance with said ordinances and requirements of City, Developer is required to furnish security to guarantee and ensure completion of all public improvements to be installed as required by subdivision approval. *13-300-0146 -> 0156*

NOW, THEREFORE, Developer and City agree as follows:

1. Letter of Credit Agreement: Prior to recordation of the final plat, Developer will be required to enter into a Letter of Credit Agreement with City to ensure completion of all public improvements as required by subdivision approval. A letter of credit shall be issued by a Federal or State insured financial institution. The City shall have control over release of the funds reserved by the letter of credit per the terms of the Letter of Credit Agreement, and funds may be released only upon written approval by the City. Said letter of credit shall be for an amount of \$2,146,938.73, which represents the City Engineer's approved estimated cost of all required public improvements plus 15% of the total cost of all required improvements for contingencies, plus an additional 10% of the total cost of all required improvements as a guarantee fee, for a total of 125% of the City Engineer's approved estimated cost of all required improvements.

Should Developer fail or refuse to install, complete, construct, repair or replace any required improvement according to City standards in accordance with the terms of

the Letter of Credit Agreement, or becomes insolvent before completion of all improvements, then the City may, at its option, apply all sums reserved by the letter of credit against the cost of completing all required improvements and to pay all expenses, including, but not limited to, all un-reimbursed engineering expenses related to the development, a 10% administration fee for the securing of contracts, and court costs and attorney fees. If the funds reserved by the letter of credit are insufficient to complete the improvements, the City may complete the improvements and collect the difference from Developer.

2. Development and Inspection Fees: Prior to recording of the final plat, Developer shall pay all applicable development fees and inspection fees as established by the city.

3. General Requirements: Developer agrees to improve all streets, pedestrian ways or easements in the subdivision and on streets which abut or serve as access to the subdivision. Developer shall be responsible for extending all utilities to the subdivision if they are not already adjacent to or on the site.

4. Compliance with Subdivision Standards: Developer agrees to comply with all of the ordinances, rules, regulations, requirements and standards of the City with respect to the construction and completion of said subdivision, and particularly to install and complete all of the off-site improvements required, within the time hereinafter stated, including but not limited to the following:

- a. Utilities: Culinary Water, Secondary Water, Sewer and Storm Drain utilities must be completed in their entirety, including laterals to each property line of lot, and must be inspected and approved before issuance of building permits.
- b. Streets and Asphalt Paving: Rough grading and finish grading and surfacing of streets. Streets graded with road base and all curb and gutter must be in place before issuance of building permits. Chip and seal to be completed by Developer prior to "final acceptance" of the subdivision.
- c. Street Lights: All street lights shall be installed and functioning before issuance of building permits.
- d. Parks and Public Open Space: Parks and public open space, including detention basins, shall be completed with all landscaping, irrigation, and other improvements required in accordance with the approved improvement plans, before issuance of building permits.
- e. Sidewalks: All sidewalks must be installed prior to "conditional acceptance" of the subdivision. No occupancy permit shall be issued until the sidewalk for any building to be occupied has been completed and

approved by the city. In no instance will the building permit completion fee be refunded until completion and inspection of sidewalk.

- f. Monuments: Permanent monuments shall be accurately set and established at such points as are necessary to definitively establish all lines and curves of the plan, road intersections, etc.
- g. Street signs and traffic control signs: Street signs shall include, but should not be limited to, regulatory, warning, stop, street address, etc. Street signs shall be paid for and installed by Developer, but shall be ordered through City to ensure uniformity and compliance with the standards adopted by the City.
- h. Fencing where required.
- i. Fire Hydrants.

Said improvements and any others designated shall be done according to the specifications and requirements of the City. All work shall be subject to the inspection of the City Engineer and any questions as to the conformity with the City specifications or standards or as to the technical sufficiency of the work shall be decided by the City Construction Staff and their decision shall be final and conclusive.

5. Commencement of Work: No work on improvements shall be commenced until finalized construction drawings have been approved by the City, final approval of the subdivision plan has been issued by the City Council, the plat has been recorded with the county, a letter of credit has been issued and proof provided to the City, and a Preconstruction Meeting held with the City Engineer and other applicable entities.

6. Building Permits: Developer agrees as consideration for the City issuing building permits after initial acceptance of improvements to allow the City to collect and retain utility fees for the time between initial and final acceptance of the utility lines. Building permits will be issued on condition that all improvements necessary to satisfy fire code requirements have been installed on the lot for which a building permit is sought and that enough security is reserved by the letter of credit to complete all required improvements for the subdivision, including any repairs or replacement after initial installation.

7. Time Period For Completion: Improvements shall be completed within a period of time not to exceed two (2) years from the date the Letter of Credit Agreement is executed. Upon approval of the City Council, the time period may be extended an additional two (2) years, or alternate time period as determined by the City, from the expiration date of the original security.

8. Conditional Acceptance/Guarantee Period: After all the required improvements are completed, Developer must request in writing that the subdivision be

“conditionally accepted.” The City Engineer shall inspect the improvements and certify that they have been properly installed and they meet adopted City standards, and shall make recommendation for conditional acceptance to the City Council. The one-year Guarantee period shall begin only upon the adoption of a conditional acceptance (‘initial acceptance’) resolution by the City Council.

Notwithstanding the fact that the land on which the improvements will be located is dedicated at the time of the recording of a plat, the City shall not be responsible for the improvements, their construction, and/or maintenance until after the one year guarantee period has expired and there is an official final acceptance of the dedicated property and improvements via resolution by the City Council. Per the terms of the Letter of Credit Agreement, Developer agrees to make all repairs to and maintain the improvements and every part thereof in good working condition during the guarantee period without cost to the City, until final acceptance is granted by the City Council.

9. Guarantee: Ten percent (10%) of the total estimated cost of the improvements shall constitute a guarantee that the said off-site improvements are installed in accordance with the subdivision standards of the City as to quality and serviceability and shall be held by the City for a period of one (1) year from the time the subdivision is "conditionally accepted" (‘initial acceptance’) by the City. Upon “final acceptance”, provided the off-site improvements have proved to have been constructed or installed in accordance with the standards of the City as to quality and serviceability, the 10% money reserved by the letter of credit (or the remaining balance reserved by the letter of credit) shall be released by the financial institution and the letter of credit shall become null and voided and the Developer released from any financial obligations as to the Project.

10. Final Acceptance: To receive “Final Acceptance” after the one-year Guarantee Period has expired, Developer must request in writing that the subdivision receive “Final Acceptance” by the City Council. The City Engineer shall inspect the improvements and certify that they have been properly installed and they meet adopted City standards, and the Public Works Director shall make recommendation for final acceptance to the City Council. Upon final acceptance by the City Council via resolution, the City will assume full responsibility for ownership and maintenance of improvements. In addition, upon final acceptance, the 10% for the improvements reserved by the letter of credit (or the remaining balance reserved by the letter of credit) shall be released by the financial institution and the letter of credit shall become null and voided and the Developer released from any financial obligations as to such improvements.

11. Applicability of Ordinance. This agreement does not supersede, but implements the South Weber City Subdivision Ordinance and all other ordinances and regulations applicable to the subdivision of land and construction of improvements thereon, and Developer agrees to comply in all respects with the provisions of said ordinances. No provision of this agreement shall limit the City in its rights or remedies under said subdivision ordinance or other applicable building ordinances.

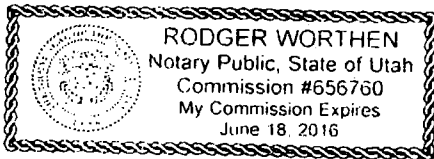
12. Successors Enforcement. The terms of this agreement shall be binding upon the parties hereon, their heirs, executors, administrators, assigns or any parties legally acquiring the parties interest through foreclosure, trust deed sale, bankruptcy or otherwise. In the event either party must take legal action to enforce the terms of this agreement, the prevailing party shall be awarded costs of court, including a reasonable attorney's fee.

IN WITNESS WHEREOF, the undersigned parties have executed this agreement this 3 day of April, 2013.

D.R. HORTON, INC.,  
a Delaware corporation

By: [Signature]  
~~Jonathan Thornley,~~ S. Grant Lefgren  
Asst. V.P. and Utah Division CFO

In the State of Utah, County of DAVIS, on the 03 day of APRIL, 2013, WARRANT D. LEFGREN personally appeared before me, and affixed his/her signature hereto.



[Signature]  
Notary Public

SOUTH WEBER CITY:

[Signature]  
By: \_\_\_\_\_ Mayor

ATTEST:

[Signature]  
City Recorder

