

Addendum 3 to Iroquois Phase 1, 2, 3, 4 and 5 Development Agreement

This Addendum 3 to Iroquois Phase 1, 2, 3, 4 and 5 Development Agreement (the "Addendum") is entered into this 28th day of APRIL, 2009 by and between Heritage Homes, Inc., a Utah Corporation (hereinafter called "Developer") and Wasatch County Housing Authority, (hereinafter called "Housing Authority") a Utah nonprofit corporation that is a separate entity from Wasatch County, a political subdivision of the State of Utah.

Ent. 348284 Bk. 991 Pg. 1160-1165

Date: 21-MAY-2009 10:37AM

Fee: \$58.00 Check Filed By: MG

ELIZABETH PALMIER, Recorder

WASATCH COUNTY CORPORATION

Rec. At: LOS TITLE INSURANCE

RECITALS

WHEREAS, the Developer is the owner of certain real property in Wasatch County, State of Utah, which property is more particularly described in **Exhibit "A"**, attached hereto and incorporated by reference herein;

WHEREAS, in addition to the property identified on **Exhibit "A"**, the Development Agreement encumbers includes Parcels A, E, and K, which have subsequently been sold by Developer to a third party; and

WHEREAS, the Developer has received approval from Wasatch County to subdivide said real property consisting of 243.5 equivalent residential units (hereinafter the "Project"), according to the terms of that certain Iroquois Phase 1, 2, 3, 4 and 5 Development Agreement, recorded on _____, as entry number _____, in Book _____, at Page _____, with the Wasatch County Recorder, with its first and second addenda also on record (the "Development Agreement");

WHEREAS, as more fully set forth in the letter of explanation attached hereto as **Exhibit "B"**, Developer and Wasatch County desire to relieve Parcels A, E, and K from any affordable housing requirements set forth in the Development Agreement or the Wasatch County Code;

NOW THEREFORE, in consideration of the mutual covenants and promises described above and otherwise contained herein, the sufficiency of which is expressly acknowledged, the parties agree as follows:

AGREEMENT

1. **Incorporation of Recitals:** The Recitals set forth above are incorporated into the body of this Addendum.
2. **Affordable Housing Requirements:** The Wasatch County Code requires that 10% of the Equivalent Residential Units in the Project be affordable housing units, or that the Developer pay to the Housing Authority a fee-in-lieu to be used to promote affordable housing in Wasatch County. This requirement is for the benefit of the Housing Authority and can be waived, or modified by the Housing Authority. The current cost for a fee-in-lieu payment is equal to \$28,000 per required affordable unit. Accordingly, the affordable housing requirement for the Project is 24.35 affordable units, or \$681,800 (the calculation of which is more fully set forth in **Exhibit "C"** attached hereto) to pay the fee-in-lieu for the Project. Housing Authority hereby agrees that Parcels A, E, and K identified in the recital above are relieved from any affordable housing obligations, and that all such affordable housing obligations related to the Project shall only be owed with respect to the property identified on **Exhibit "A"**. Developer and the current owners of Phase 6 Parcels A, E, and K (JMS Enterprises, LLC) entered into an agreement in which Developer agreed to pay for the entire affordable housing obligation incurred by parcels A, E and K. For purposes of clarification, this entire obligation is included in the 24.35 affordable housing units stated above, which is being paid by Developer as stated below, and does not constitute any additional affordable housing units.
3. **Developer's Obligations:** To meet the foregoing \$681,800 Affordable Housing obligation for the Project, Developer agrees to pay Housing Authority a fee-in-lieu of \$4,575.84 per unit for each of the

149 units Developer has been approved to construct, or, in the absence of any construction on any particular lot in the Project, for any vacant lot in the Project that Developer sells. Said payments shall be made to Housing Authority by Developer at the time of each individual home or vacant lot closing and property is transferred to a third party.

4. **Satisfaction of Affordable Housing Requirements:** Performance of the Developer's obligations under this Agreement satisfies the Developer's obligation for affordable housing under the Wasatch County Code as applied to the development of the land described in **Exhibit "A"**, and the Project as described above.
5. **Remedies:** Failure by the Developer to perform in accordance with this Addendum will constitute failure to satisfy the affordable housing requirements of the Wasatch County Code. In the event of default by the Developer, the County shall have authority to exercise any and all remedies available at law or in equity to enforce the terms and conditions of this Addendum.
6. **Entire Agreement:** This Addendum constitutes the entire understanding and agreement between the parties regarding the issues contained herein and no modification shall be binding unless reduced to writing and signed by the parties hereto.
7. **Duration of Addendum:** This addendum shall terminate and become null and void upon the substantial completion of fee-in-lieu payments.
8. **Successors:** This Addendum shall run with the land. The Addendum shall be binding upon all successive owners of said land.
9. **Severability:** In the event any provision of this Addendum is held invalid, void or unenforceable by a court of competent jurisdiction, the remaining provisions of this Addendum shall nevertheless remain in full force and effect.

For the DEVELOPER

Heritage Homes, Inc.

By: Brock Johnston

Its: MANAGER

For the HOUSING AUTHORITY

Wasatch County Housing Authority

By: Gary McDonald
Its: EXECUTIVE DIRECTOR

STATE OF UTAH)
)
COUNTY OF WASATCH)
)
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On the 28th day of April, 2009, personally appeared before me Gary McDonald and Brock Johnston, the signers of the foregoing instrument, who duly acknowledged to me that they executed the same.

Kristy Tatton
Notary Public

My Commission Expires: 8-8-09

Residing at: Heber

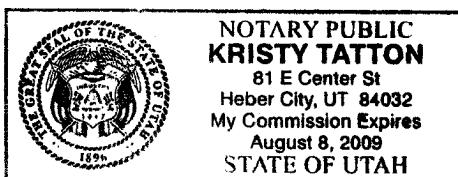


Exhibit A

Iroquois Phase 6 Parcels B, C, G, L, M, N, O, P, & U.

01Q-6003, 01Q-600C, 01Q-600G, 01Q-600L, 01Q-600M, 01Q-600N, 01Q-600P, & 01Q-600U

Iroquois amended parcel I to be known as "The Retreat at Jordanelle phase 2", Lots 301, 302, 303, 304, 305, 306, 307, 308, 309, 310 and 311. OTJ-2301 through OTJ-2311

Iroquois Phase 6 amended parcels F & G to be known as "The Retreat at Jordanelle phase 1", Lots 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, & 226. OTJ-0209 through OTJ-0226

Iroquois Phase 5, Lot 9

01Q-5009

EXHIBIT "B"

April 27, 2009

Gary L. McDonald
Executive Director
Wasatch County Housing Authority
P.O. Box 776
Heber City, UT 84032

RE: Affordable Housing Agreement for The Retreat at Jordanelle (Formerly Iroquois Phase 6)

Dear Gary:

I am writing this letter requesting to make a few adjustments to our current Affordable Housing Agreement that we have with the Wasatch County Housing Authority. To better understand this request, I feel it necessary to give you some back ground to this development:

To my understanding, the original developer of the Iroquois Development was a gentleman by the name of Richard Wolper. His development company was named Deer Meadows Preserve, LLC. Rich Wolper and Deer Meadows Preserve, LLC signed a Development Agreement with Wasatch County agreeing to subdivide the Iroquois Development into six separate development phases. Some of these phases had approvals to build residential developments and some of the phases were approved to build commercial developments. In July of 2005, our company, JMR Holdings, LLC, purchased all of the property that made up Iroquois Phase Six and Lot 9 of Phase 5. (Approximately 83 acres)

JMR Holdings, LLC is a company that is solely owned by the owner of Rainey Homes, Inc., Joe M Rainey. The purpose of this company is to purchase land and hold it until the market is ready for the land to be developed. In July of 2006, JMR Holdings, LLC sold all of the property to Heritage Homes, Inc. (Our Development Company, which is also solely owned by Joe M. Rainey). At that time, we recorded a new plat for all of Iroquois Phase 6. (ATTACHED as Exhibit A) This plat dedicated all of the public rights of way for Wasatch County. It also separated all of the land in Iroquois Phase 6 into separate parcels labeled A through U. At that time, these parcels were not approved to construct buildings on. They were merely parcels approved and zoned for residential construction. When it comes time to build homes on these parcels, the individual lots will be sold from Heritatge Homes, Inc. (Developing Company) to Rainey Homes, Inc. (Building Company, also solely owned by Joe M Rainey.)

During the remainder of 2006 and into 2007, we worked with Wasatch County on a development agreement and approvals to construct homes on certain parcels within Phase 6. It was our plan to separate these individual parcels (A through U) and record them as individual phases located within the Iroquois Phase 6 Development as the market dictated that the demand was sufficient. As you can see today, we started that process by recording Parcels G and F into Iroquois Phase Six Amended The Retreat at Jordanelle Phase 1 and recorded Parcel I into Iroquois Phase Six Amended The Retreat at Jordanelle Phase 2. During this time, we also worked with Jennifer Kohler with the Wasatch County Housing Authority to develop an Affordable Housing Agreement. On March 7, 2007 we received a letter from Jennifer. The letter was in response to an email that we had written in regards to Affordable Housing for our Project. Jennifer mapped out a plan to provide a way for us to pay a portion of the affordable housing fee-in-lieu payments for each unit that we built. At that time, we indicated to Jennifer that we had 244.5 ERU's, of which 10% of those units were to be treated as Affordable Housing Units. We agreed to structure a fee-in-lieu program in which we would pay \$28,000 per required affordable unit, based on the amount of ERU's for the project. This amount that she indicated in her

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April 27, 2009

letter totaled \$684,600. Also, in the letter that Jennifer wrote that we were planning on building 283 units, which resulted in \$2,419.08 due at closing of each individual unit.

The problem with this Affordable Housing Agreement is that it was somewhat premature. We were not sure at that time what was going to happen on all of the Parcels located within Iroquois Phase 6. We did have a good idea as to how many ERU's that we had to work with, but we did not know how we were going to use them. It was imperative to Wasatch County that we had our Affordable Housing Agreement done with the Wasatch County Housing Authority before we would be able to move forward on our project, so we put the Agreement together with Jennifer knowing that the Agreement would probably need some adjusting down the road.

Now that we have approved every parcel with the County in regards to Phase 6 and Lot 9 of Phase 5, we are prepared to make the necessary adjustments with the Wasatch County Housing Authority:

First, we only ended up using 243.5 ERU's in all of Iroquois Phase 6, which should reduce the amount of the total affordable housing number down to \$681,800.

Second, Heritage Homes Inc. sold off Parcels A, E and K (along with 94.5 ERU's) of the Original Iroquois Phase 6 Plat to JMMS Enterprises, LLC/GDC Construction, Inc. Those Parcels (A, E, and K) are now known as The Retreat Townhomes Plats A, B and C. As part of that sale, Heritage Homes Inc. committed that it would take care of all of the Fee-in-Lieu payments for all of Phase 6 (\$681,800) with its own parcels and units. We have been approved for and are currently building 149 units. We have finished the first 6 units and are planning to close on the first one of those units at the end of this month. To meet Heritage Homes' \$681,000 Wasatch County Affordable Housing obligation, Heritage Homes agrees to pay the Wasatch County Housing Authority a fee-in-lieu in the amount of \$4,575.84 per unit for each of the 149 units Heritage Homes has been approved to construct, or, in the absence of any construction on any particular lot, for any vacant lot that Heritage Homes sells. This \$4,575.84 per unit fee-in-lieu is to be paid by Heritage Homes to the Wasatch County Housing Authority at the time of each individual home or vacant lot closing and property is transferred to a third party. We hope that this will take care of any issues or questions that may arise from our responsibility to the Wasatch County Housing Authority throughout this development.

Thank you very much for your time and help in this matter.

Sincerely,



Brock Johnston
Land Development Manager
Heritage Homes, Inc./Rainey Homes, Inc.

EXHIBIT "C"

Total ERU's in Project	243.5
10% Affordable Housing	24.35
\$28,000 per Affordable Housing Unit	\$681,800*
Individual Townhome/lots to be built	149**
Total amount of NOI per Individual Townhome Unit/Lot	\$4,575.84***

* The \$681,800 Affordable Housing Obligation includes all Affordable Housing Obligations for the entire phase 6 development, including the obligations for parcels A, E and K in Phase 6.

(Parcels A, E & K make up a total of 94.5 ERU's)

** In the calculation above, the 149 individual Townhomes/Lots to be built are located in Lot 9 Phase 5, and the following parcels located within Iroquois Phase 6: Parcels B, C, G, L, M, N, O, P, U, All of Iroquois amended Parcel I to be known as "The Retreat at Jordanelle Phase 2", and All of Iroquois Phase 6 amended parcels F & G to be known as "The Retreat at Jordanelle Phase 1"

*** To meet the above-referenced \$681,000 Wasatch County Affordable Housing obligation, the developer, Heritage Homes, agrees to pay the Wasatch County Housing Authority a fee-in-lieu of \$4,575.84 per unit for each of the 149 units the developer has been approved to construct, or, in the absence of any construction on any particular lot in the project, for any vacant lot the developer sells. The developer, Heritage Homes, is to pay the \$4,575.84 per unit fee-in-lieu to the Wasatch County Housing Authority at the time of each individual home or vacant lot closing and property is transferred to a third party.