

After recording return to:
City of Baker
1655 First Street
Baker City, OR 97814

IMPROVEMENTS AGREEMENT
(Declaration of Deed Restrictions and Restrictive Covenant)

DATE: July 7, 2023

PARTIES: Pride LLC "Owner"
3307 W. Davis Ln.
Meridian, ID 83642

Big Creek Builders "Developer"
Attn: David Hays
22781 Medical Springs Hwy.
Baker City, OR 97814

City of Baker "City"
An Oregon municipal corporation
1655 First Street
Baker City, OR 97814

PROPERTY DESCRIPTION: Tax Lot 401 on Baker County Assessor’s Map 09S40E 16DA (Ref. 16528), situated in Baker County, Oregon and more specifically described as Lot 5, Park Springs Subdivision, Phase 1, Baker City, Baker County, Oregon (“Property”).

RECITALS:

- A. In summer of 2018, Owner’s predecessors (Kevin & Kimberly Luckini) applied to the City for approval of the development of the Property, including the subdivision of the Property into 28 lots and the development of a 28-unit attached (townhome) dwellings in 7 structures of 4 attached single-family dwellings each (City File Nos. SUB-18-071 & SDR-18-072, Luckini) collectively the “Development.”
- B. The City granted preliminary subdivision plat and site design and related approvals as requested on July 25, 2018 (“Development Approval”); the City’s decision was not appealed, and it is now final and effective.
- C. The City’s Development Approval included conditions that required the applicant and then owner of the Property to construct all of the public facilities and infrastructure needed to serve this development, including sanitary sewer collection and service lines, stormwater collection and treatment system, water distribution and service lines, streets,

sidewalks and related transportation facilities. The Development Approval required construction of these facilities and infrastructure prior to approval and recordation of the final plat.

- D. The specific public infrastructure elements that the City's Development Approval required the Owners, or their successors in interest, to construct consist of the following: water and sanitary sewer lines; paving, curb and gutter; street and traffic control signs, planter strips, storm sewer, street lighting, street trees, and sidewalks for Park Springs Avenue (collectively the "Public Improvements").
- E. Following the City's Development Approval, the original owners (Kevin & Kimberly Luckini) conveyed title to the Property to the Developer who subsequently conveyed title to Property to the Owner. Owner and Developer ("Owner/Developer") are successors in interest to the original owners and have assumed all of the burdens, benefits and legal obligations set forth in the City's Development Approval, including full compliance with the conditions of approval attached to the Development Approval.
- F. While Owner/Developer have fulfilled or otherwise completed some of the conditions of the City's Development Approval, they seek to defer other conditions and delay the construction of certain public improvements and infrastructure until after recording the final plat for one or more phases of the Development. In so doing, Owner/Developer offer to post a financial guarantee for this work in the form of a cash deposit to guarantee and pay the cost of designing and constructing these public improvements.
- G. Section 4.3.170 (Public Improvements Required) of the Baker City Development Code (BCDC) requires developers to complete construction or installation and obtain City inspection approval of all public improvements before recording the final plat, or provide a financial guarantee for the completion of all required public improvements.
- H. BCDC §4.3.180 (Performance Guarantee) allows construction of public improvements to be deferred through the execution of a suitable improvements agreement with the developer providing a sufficient financial guarantee to complete the work.
- I. The parties are willing and able to enter into this Improvement Agreement, pursuant to BCDC §4.3.180(D) in partial fulfillment of the requirements of the BCDC to defer the construction of certain public improvements until after recordation of one or more final plats of the Development, so long as Owner/Developer constructs all public infrastructure and improvements by June 1, 2024 and completely fulfills all conditions of the City's Development Approval.

NOW THEREFORE, based upon the foregoing Recitals, which are incorporated herein by this reference, the Parties hereby agree as follows:

1. The Parties agree to the following basic terms:
 - a. The public improvements deferred through this Improvements Agreement consist of the

following: water and sanitary sewer lines; paving, curb and gutter; street and traffic control signs, planter strips, storm sewer, street lighting, street trees, and sidewalks fronting lots 5-12 and the east side of Park Springs Avenue running north to Baker Street (collectively the "Public Improvements"). All other public improvements required as conditions of the City's Development Approval shall be constructed prior to recording any final plats.

- b. The Parties agree that full performance of this Improvements Agreement shall fulfil the Owners' obligations imposed by the City's Development Approval to design and construct the Public Improvements.
 - c. The Parties agree that the estimated cost of designing and constructing the Public Improvements as described herein is \$123,900.50. If during the course of Owner/Developer's construction of the Public Improvements and the term of this Agreement, that cost estimate increases or the actual cost of construction proves to be more than estimated, Owner/Developer shall, upon demand by the City, deposit with the City additional cash or liquid instrument acceptable to the City to make up the difference so that the City is in possession of 100% of the actual or estimated cost to design and construct the Public Improvements.
2. Owner and Developer ("Owner/Developer"), collectively, jointly and severally, hereby agree to perform, complete or otherwise comply with the following. All work related to the design and construction of Public Improvements shall be performed in compliance with BCDC §§3.4.900 (Construction Plan Approval and Assurances) and 3.4.1000 (Installation) and the following:
- a. Engage one or more suitably qualified and Oregon licensed design professionals to prepare and submit to the City for review and approval design drawings for all of the Public Improvements that are sufficient for city review and for subsequent construction of the Public Improvements. These design drawings shall be drawn to scale, in a form and format satisfactory to the City. All Public Improvement design drawings shall conform to all applicable City adopted design standards and requirements for such public improvements, including BCDC Chapter 3.4 (Public Facilities).
 - b. Within 7 days after executing this Agreement, submit to the City \$123,900.50 in cash or similarly liquid instrument and sufficient to cover the cost to design and construct the Public Improvements ("Financial Guarantee").
 - c. Apply for and obtain approval of all permits, including public works and right-of-way permits, required by the City for the construction of the Public Improvements and related activities. Concurrently, Owner/Developer shall pay all City permit and review fees for the City's acceptance, review and approval of the design drawings of the Public Improvements.
 - d. Engage one or more suitably qualified contractors to construct the Public Improvements in accordance with the approved design drawings for those Public Improvements.

- e. Notify the City's Public Works Department as construction of Public Improvements proceeds, to obtain interim/progress inspections of the Public Improvements by the City, and pay all applicable City inspection fees for these inspections. Owner/Developer shall make any revisions or corrections to the design and construction of the Public Improvements as directed by the City's plan reviewers and inspectors.
 - f. As components of the Public Improvements are constructed, inspected by the City, and certified in writing as satisfactory, the Owner/Developer shall within 14 days of such certification submit to the City a request for progress payment for the cost of that Public Improvement or component thereof, payable out of the Performance Guarantee that the City is holding, less 10% retainage. As Owner/Developer's work to design and construct the Public Improvements under this Section progresses and the Performance Guarantee is drawn-down through progress payments, if the actual cost of that work exceeds what was estimated and the balance of the Performance Guarantee held by the City drops below the amount estimated to complete the remaining components of the Public Improvements, the Owner/Developer shall replenish the Performance Guarantee by submitting additional amounts to the City sufficient to pay the estimated cost of the remaining Public Improvements.
 - g. Owner/Developer shall complete construction of all Public Improvements required by the City's Development Approval no later than June 1, 2024. In the event the Owner/Developer fails to complete all required Public Improvements, as described herein, by June 1, 2024, the City may, within its sole discretion, use the amount of Performance Guarantee it is holding to pay for the construction of any/all remaining Public Improvements.
 - h. Upon City acceptance and certification of the last component of Public Improvements, as described herein, and final certification that all Public Improvements have been completed to the City's satisfaction, the Owner/Developer shall warranty all repairs, replacement and maintenance of all Public Improvements due to materials or workmanship thus constructed for a period of one year from the date of the City's final acceptance and certification.
3. The City hereby agrees to perform or otherwise comply with the following:
- a. The City shall accept from Owner/Developer cash or another liquid instrument acceptable to the City in the amount of \$123,900.50 ("Performance Guarantee") as a suitable financial guarantee for the design and construction of the Public Improvements described herein and required by the City's Development Approval. The City shall either deposit the Performance Guarantee into a separate interest bearing account or account separately for the Performance Guarantee and all accrued interest. The Performance Guarantee shall be deemed sufficient under BCDC §4.3.180 unless, during the course of Owner/Developer's construction of the Public Improvements, cost estimates increase, or the actual cost of construction is more than estimated. In that event, the City shall notify Owner/Developer of the deficiency and shall cease review or approval of final plat(s)

until the Owner/Developer provides additional cash to make up the difference between actual costs and the amount the City is holding as a Performance Guarantee.

- b. Once the City has accepted and deposited the Performance Guarantee, it shall then accept and review in the normal course all designs, plans, drawings, and permit applications for the construction of Public Improvements contemplated in the City's Development Approval and this Agreement. In this review, the City shall apply the then-current public works and engineering design standards adopted for such public improvements in the City, including BCDC Chapter 3.4 (Public Facilities).
- c. Consistent with BCDC §4.3.180(D), the City shall approve, and allow the Owner/ Developer to record, the final plat for one or more phases of the Development so long as the Performance Guarantee the City is holding at the time of final plat review is sufficient to pay the estimated cost to design and construct the remaining Public Improvements in the phase(s) for which Owner/Developer seek final plat approval, and the proposed final plat conforms to all applicable City requirements. If the Owner/Developer fails to complete construction of all Public Improvements required by the City's Development Approval by June 1, 2024, the City shall cease review and approval of any further or pending final plats in the Development until all Public Improvements are constructed regardless of whether the City is still holding any of the Performance Guarantee.
- d. At the Owner/Developer's request, the City shall provide interim inspections as components of the Public Improvements are completed and, if those components conform to the then-applicable City-adopted standards for Public Improvements, the City shall certify those improvement components as accepted. Upon its certification that a component of required Public Improvements is satisfactorily completed, the City shall accept and may pay the Owner/Developer's request for partial release of the Performance Guarantee equal to the cost to design and construct that component, less 10% as retainage.
- e. If the Owner/Developer fails to complete construction of all Public Improvements required by the City's Development Approval by June 1, 2024, the City, within its sole discretion, may use all or a portion of the remaining Performance Guarantee, including retainage, to complete design and construction of the remaining incomplete Public Improvements. If the City completes construction of the Public Improvements under this subsection, and the amount of the Performance Guarantee is insufficient to cover the cost of this work, the City may demand that the Owner/Developer replenish the Performance Guarantee or otherwise require the Owner/Developer to pay the City's full cost to complete the design and construction of any remaining Public Improvements.
- f. Upon final completion of the Public Improvements and satisfactory inspection and acceptance of the complete Public Improvements, the City shall, within 21 days, return any remaining, unexpended amount of the Performance Guarantee to the Owner/Developer. The City shall retain all interest earned on the Performance Guarantee over the time that the City holds it as compensation for the City's administration of this Agreement.

4. General Provisions: The following general provisions shall apply to this Agreement and any application or interpretation of it:

- a. Interpretation and Conflicts. The provisions of this Improvements Agreement shall not be construed or applied in a manner contrary to the procedural or substantive requirements of state law the Baker City Development Code or other standards adopted by the City nor contrary to the City's Development Approval. The provisions of this Agreement are intended to augment the procedures and requirements of the BCDC Chapter 3.4 (Public Facilities), and in the event of any conflict between this Agreement and BCDC requirements, the BCDC shall control.
- b. In no event shall the City be under any obligation to release to the Owner/Developer any amounts from the Performance Guarantee in response to a request for progress payment for a component of the Public Improvements that exceed(s) the estimated cost of those improvements or component thereof. In other words, the City shall maintain and hold a Performance Guarantee balance that is sufficient to cover the estimated cost to construct the remaining Public Improvements yet to be constructed and completed, plus the 10% retainage. At no point shall the City be required to release amounts from the Performance Guarantee as progress payments when the remaining balance would not be sufficient to pay for the completion of the remaining (unconstructed) Public Improvements, plus 10% retainage. If at any point in the construction process, the Owner/Developer submits a request for progress payment that would draw-down the Performance Guarantee below the estimated amount required to construct remaining Public Improvements (plus 10% retainage), the City shall require, and the Owner/Developer shall pay, to the City an amount sufficient to replenish the Performance Guarantee.
- c. In no event shall the City be under any obligation to approve one or more final plats when any then-pending request for progress payment by the Owner/Developer exceeds the estimated cost of that Public Improvement component or the amount the City is holding as a Performance Guarantee.
- d. If the Owner/Developer fails to complete design and construction of all Public Improvements by the June 1, 2024 deadline and the City completes any portion of this work, the City shall be entitled to full payment or reimbursement from Owner/Developer for the City's reasonable costs expended to design and construct the remaining Public Improvements.
- e. Dispute Resolution and Attorney Fees. Any dispute arising under the interpretation or application of this Agreement shall be resolved in the follow manner:
 1. Upon written notification of a dispute, the Parties will first meet, confer and attempt to resolve the dispute with or without a mediator.
 2. Second, if the meeting and conferring process is not successful in resolving the

OFFICIAL STAMP
PAUL JOSEPH KING
NOTARY PUBLIC - OREGON
COMMISSION NO. 1016347
MY COMMISSION EXPIRES AUGUST 30, 2025

B23 29 0257

[Handwritten Signature]

Notary Public – State of Oregon
My commission expires: 8/30/2025

STATE OF OREGON Idaho)
County of Baker Ada) ss
)

The foregoing instrument was acknowledged before me this 11th day of July 2023 by, Russell D. Humphreys as the authorized representative of the Developer herein.

JULIE WITHERS
Commission #69897
Notary Public
State of Idaho
My Commission Expires: 05/08/2029

[Handwritten Signature]
Notary Public – State of Oregon Idaho
My commission expires: 5/8/2029

STATE OF OREGON)
County of Baker) ss
)

The foregoing instrument was acknowledged before me this 7 day of July 2023 by, Jon France as the City Manager of the City of Baker, Oregon.

OFFICIAL STAMP
STACY JEAN SPIRIET
NOTARY PUBLIC - OREGON
COMMISSION NO. 1004333A
MY COMMISSION EXPIRES OCTOBER 15, 2024

[Handwritten Signature]
Notary Public – State of Oregon
My commission expires: 10/15/2024

STATE OF OREGON }
COUNTY OF BAKER }
I CERTIFY THAT THIS
INSTRUMENT WAS RECEIVED
AND RECORDED IN THE BOOK
OF RECORDS OF SAID COUNTY

STEFANIE KIRBY, BAKER CO. Clerk
BY Aren Phillips DEPUTY

DOC#: B23290250
7/20/2023 10:15 AM
REFUND: .00 126.00