



ENT 131329:2020 PG 1 of 30
JEFFERY SMITH
UTAH COUNTY RECORDER
2020 Aug 31 9:39 am FEE 202.00 BY MA
RECORDED FOR PAYSON CITY CORPORATION

DEVELOPMENT AGREEMENT

This Development Agreement (“**Agreement**”) is entered into this 10th day of Aug., 2020 by and among the City of Payson, a Utah municipal corporation, hereafter referred to as “**City**”, and Arrowhead Partners LLC, a Utah limited liability company, hereafter referred collectively as “**Developer**”. The Developer is the owner of property contained in the Villages at Arrowhead Park, Plats I and J, (the “**Project**”). The City and Developer are sometimes collectively referred to in this Agreement as the “**Parties**”.

RECITALS

- A. Payson City, acting pursuant to its authority under Utah Code Annotated 10-9a-102 (2) *et seq.*, as amended and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations, has made certain determinations with respect to the development and, in exercise of its legislative discretion, has elected to enter into this Agreement.
- B. Developer is the owner of certain real property located in Payson, Utah and desires to develop a portion of the Developer’s property and is willing to design and construct the Project in a manner that is in harmony with and intended to promote the long range policies, goals, and objectives of the Payson City General Plan, zoning and development regulations in order to receive the benefit of vesting for certain uses and zoning designations under the terms of this Agreement as more fully set forth herein.
- C. The Project is arranged on a portion of Utah County Parcel 30:009:0094 located on or about 1700 N North and 1300 East, Payson, Utah, with the legal description being contained in “**Exhibit A**” attached hereto and incorporated herein by this reference (the “**Property**”).
- D. Parties acknowledge the Project is within the North Payson Annexation Planning Area and subject to the terms and conditions of the North Payson Annexation Specific Plan and Annexation Agreement recorded on February 28, 2003 in the Utah County Recorder’s Office as Entry No. 29430 (the “**Specific Plan and Annexation Agreement**”), including participation in a Specific Plan for the North Payson Annexation Planning Area. The Specific Plan contains intended uses, densities, and a mixture of residential neighborhoods within the planning area. The Specific Plan designates the Project site as residential housing and with proper approvals will be developed to accommodate single-family dwellings and twin home units.
- E. Developer requests city council action resulting in approval of a Planned Residential Development as provided in Section 20.10 of the Payson City Municipal Code. The approvals are implemented through this Agreement.
- F. Developer has prepared and presented to the City land use applications for 43 single-family dwellings and 48 twin home units known as Villages at Arrowhead Park, Plats I & J, hereafter referred to as the “**Project**” as shown as Phases 9 & 10 on the Master Plan for the Villages at Arrowhead Park development (“**Master Plan**”) attached hereto as “**Exhibit F**”. The application package was submitted

and reviewed by City pursuant to the requirements of the Payson City Municipal Code and related protocols and policies and other applicable zoning, engineering, fire safety and building requirements. The resulting approved subdivision, prepared in accordance with Utah Code Annotated 10-9a-603, or any successor provision, and approved by the City, effectuating a subdivision of any portion of the Project is referred to as the “**Final Plat**” and the approved civil and construction drawings and associated studies and plans are referred to herein as the “**Plans and Specifications**”. The Developer may complete the Project in one or more phase.

- G. Developer and City desire to allow the Developer to make improvements to the Property and develop the Project in accordance with the Final Plat and the Plans and Specifications.
- H. The Payson City Council has authorized the negotiation of and adoption of a development agreement which advances the policies, goals and objectives of the Payson City General Plan, and preserve and maintain the atmosphere desired by the citizens of the City. Moreover, the Developer has voluntarily agreed to the terms of this Agreement and hereby acknowledges the obligations to complete the Project in a manner consistent with the approval of the City Council and the regulations of the land use ordinances.
- I. Consistent with the foregoing authorization and the provisions of Utah State law, the City's governing body has authorized execution of this Agreement by Resolution 08-05-2020 B, a copy of which is attached to this Agreement as “**Exhibit B**”.

AGREEMENT

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, IT IS AGREED AS FOLLOWS:

- I. Recitals.** The recitals set forth above are incorporated herein by this reference.
- II. Exhibits.** The exhibits and attachments are intended to be included as if in the body of this Agreement and regulated as such:

- Exhibit A: Legal Descriptions
- Exhibit B: Adopting Resolution
- Exhibit C: Approved Road Details
- Exhibit D: Project Landscaping Plan - Plat J
- Exhibit E: Residential Dwelling Design Elements - Plat J
- Exhibit F: Master Plan Concept
- Exhibit G: Project Landscaping Plan - Plat I
- Exhibit H: Twin Home Dwelling Design Elements - Plat I
- Exhibit I: Landscape Phasing Plan - Plat I
- Exhibit J: Landscape Phasing Plan - Plat J
- Exhibit K: Private Property - Right of Entry Waste Collection for Land Located on Private Property
- Exhibit L: City Letter
- Exhibit M: Example of Outdoor Living Area

III. Developer Obligations.

- A. **Completion of the Project.** Developer agrees to construct and complete the Project in accordance with the Preliminary Plan, Final Plat and the Plans and Specifications, collectively, (the “**Work**”) and dedicate to the City all designated public roads and other applicable public infrastructure included within the Project to the extent to such roads and other public infrastructure are located within the boundaries of the City and are to be operated by the City, or planned to be dedicated to the City as a condition of approval of a development application (“**Public Infrastructure**”). Any modification from the approved Project Plans and Specifications not mentioned within this Agreement must be approved in writing by both Developer and City.

All improvements outside of the public right-of-way are the ownership and maintenance responsibility of Developer. This includes: private street improvements; driveways; parking areas; pedestrian walkways; common area improvements; and utilities, except as provided by Utah Code. Developer agrees to provide access to electrical facilities and meters for inspection and maintenance by Payson Power personnel. Developer shall coordinate with Payson Fire Department to complete inspections of on-site fire protection devices.

- B. **Preliminary and Final Approval.** On March 18, 2020, the Payson City Council granted preliminary and final approval contingent upon satisfaction of certain conditions. All aspects of the Project must comply with all related Payson City plans, ordinances, codes and the improvements must be completed and meet all Payson City standards and specifications.

Developer hereby agrees to satisfy all conditions imposed by the Payson City Council in conjunction with the land use approvals as such conditions pertain or relate to the project. All infrastructure, roadways, and improvements associated with the Project must be completed by Developer, unless otherwise noted herein, and inspected and approved by City prior to the issuance of any building permit or certificate of occupancy, as applicable, in the Project or phase thereof. Project amenities and landscaping will be provided in accordance with the amenity schedule herein.

- C. **Project Density and Lot Arrangement.** The Project was approved in accordance with Chapter 20.10 of the Payson City Code as a Planned Residential Development (PRD) in order to allow flexibility in the layout of the building lots. The approved Final Plat J allows for 43 single-family dwelling lots and the approved Final Plat I allows for 48 twin home units. Developer agrees to satisfy the minimum requirements of the Planned Residential Development together with conditions imposed by the City Council pursuant to the City’s ordinances, policies, standards and procedures in effect as of the date of this Agreement (“**Vested Laws**”).

The Developer shall be entitled to the project density and lot arrangement for the Project consistent with the approval granted by the Payson City Council and in accordance with the Vested Laws, together with the Plans and Specifications for the Project.

- D. Relationship with Annexation Agreement.** The Parties understand and agree the Project property is included in the North Payson Annexation and subject to the provisions of the Specific Plan and Annexation Agreement approved through a legislative act of the Payson City Council.

The Parties expressly agree that the Project shall not be constrained by or subject to the Timing and Sequencing restriction set forth in Section 2.3 of the North Payson Annexation Specific Plan and Annexation Agreement recorded in the official records of Utah County, Utah on February 28, 2003, as Entry No. 29430:2003, and the City shall not withhold building permits and/or certificates of occupancy if development of the project exceeds such restriction. Refer to “**Exhibit L**”.

- E. Geotechnical Studies.** Developer agrees to follow all recommendations and suggestions of the geotechnical report prepared by Earthtec Engineering as dated December 19, 2017, and any subsequent studies and amendments, unless a stricter or more intensive regulation is required by the land use and development ordinances. For avoidance of a doubt, if any unit is built without a basement or habitable space below finished grade, foundation drains will not be required unless specifically noted with the geotechnical report referenced above.
- F. Grading, Slope Stabilization, and Storm Water.** Improvements within the Project must be completed in a manner that controls runoff from impervious surfaces, parking areas, roofs, and sloped areas. Slopes steeper than 2:1 must be properly retained. Stabilization methods must be properly designed and approved by Payson City prior to installation.
- G. Electrical Considerations.** As required by city ordinance, Payson City shall provide all electrical service to the Project, unless otherwise agreed to in writing by Payson City or otherwise ordered by a court of competent jurisdiction. Provision of electrical service for future customers must satisfy the regulations of federal, state and local law or ordinance, and any other service provider obligations. The Parties will work together to identify the proper easements or needed land dedication to provide connection to the Payson Power electrical system.
- H. Circulation, Access, and Parking.** Developer agrees to provide and maintain the following:
- i. Private streets, sidewalks and walkways, parking areas, and driveways shall be designed, improved, and maintained to provide unobstructed access to these areas and structures by the residents, service providers, and public safety personnel and apparatus. Parking is prohibited within the private street right-of-way.
 - ii. Two points of ingress/egress shall be provided for the Project at all times. Temporary construction access must satisfy the requirements of the Payson Fire Department.
 - iii. Each dwelling unit shall contain at least an attached two-car garage. The garage area must be maintained as off-street parking space and shall not be used or converted in a manner that will eliminate the required parking. Visitor parking shall be provided and maintained as indicated on the Plans and Specifications.

- iv. Recreational vehicle parking and storage is prohibited. The Homeowner's Association shall restrict and enforce any parking or storage of any trailers, boats, campers, or any other recreational vehicle.

1. **Residential Dwelling Design Elements.** The Project is situated in an area designated for residential housing in the North Payson Annexation Specific Plan and Annexation Agreement. The Parties acknowledge the Project will be improved to accommodate single-family dwellings and twin home units. To further the land use goals of the City, design criteria has been established for the structures included in the Project. Illustrative representation of the allowable housing styles and appearances are attached hereto as "**Exhibit E**" and "**Exhibit H**".

- i. Dwelling sizes in Plat J (single-family):
 - a. All dwellings will be two-story structures. The dwellings shall have at least 650 square feet on the main floor, and not less than a total of 1500 square feet of finished living area above the finished lot grade.
 - b. Each dwelling shall contain at least an attached two-car garage that measures no less than 19 feet wide by 20 feet deep from the inside wall. All garages will be designed and accessed from private drives thus minimizing parking and traffic on public roads and reducing pedestrian/vehicle conflicts.
 - c. The required square footage is exclusive of garage, porches, decks, and similar features.
- ii. Exterior requirements in Plat J:
 - a. In order to create well planned housing community, dwellings will be designed to have exterior elevations with strict avoidance of tract housing, file plans, repetitive use of colors, materials, and architectural features. The Project will contain dwellings with varying design and architecture. Dwellings with the same front façade will not be placed adjacent to one another or across the open space corridor from dwellings with the same or similar elevations.
 - b. Each dwelling shall be constructed using hard surface materials including masonry products, stone, stucco and cementitious fiber board with the exception of roofing materials, eaves, doors, windows, and other similar architectural details. If any dwelling has stucco, the builder will be required to use a combination of stone, cementitious fiber board, and stucco on the exterior façade. If a building is completed with cementitious fiber board on all sides, stucco or stone is not required. The use of metal soffit or fascia is allowed. Processed wood, aluminum, and vinyl exteriors are not permitted.
- iii. Dwelling sizes in Plat I (twin home units):
 - a. All dwelling units will be two-story. The units shall have at least 600 square feet on the main floor, and not less than a total of 1200 square feet of finished living area above the finished lot grade.
 - b. Each dwelling shall contain at least an attached two-car garage that measures no less than 19 feet wide by 20 feet deep from the inside wall. All garages will be designed and accessed from private drives thus minimizing parking and traffic on public roads and reducing pedestrian/vehicle conflicts.
 - c. The required square footage is exclusive of garage, porches, decks, and similar features.

iv. Exterior requirements in Plat I:

- a. In order to create well planned housing community, dwellings will be designed to have exterior elevations with strict avoidance of tract housing, file plans, repetitive use of colors, materials, and architectural features. The Project will contain dwellings with varying design and architecture. Dwellings with the same front façade will not be placed adjacent to one another or across the open space corridor from dwellings with the same or similar elevations.
- b. Each dwelling shall be constructed using hard surface materials including masonry products, stone, stucco and cementitious fiber board with the exception of roofing materials, eaves, doors, windows, and other similar architectural details. If any dwelling has stucco, the builder will be required to use a combination of stone, cementitious fiber board, and stucco on the exterior façade. If a building is completed with cementitious fiber board on all sides, stucco or stone is not required. The use of metal soffit or fascia is allowed. Processed wood, aluminum, and vinyl exteriors are not permitted.

J. **Project Landscaping and Fencing.** The Developer made various commitments to the Payson City Council to obtain approval of the land use applications.

- i. Project landscaping shall be completed as follows:
 - a. Install and maintain the open space areas surrounding the single-family dwelling units in Plat J and the twin home structures in Plat I and all common areas consistent with the approved landscaping plan and the phasing schedules included in “**Exhibits D, G, I & J**”. A performance guarantee shall be provided prior to the issuance of a certificate of occupancy as noted in this Agreement to assure the landscaping improvements will be completed as referenced in Section M below;
 - b. Two-inch caliper deciduous trees are to be planted and maintained in the 6 foot landscape planter at a maximum spacing of 40’ on center. Additional two-inch caliper trees shall be planted throughout common areas consistent with the approved landscaping plan provided in “**Exhibits I and J**”;
 - c. At least five (5) two-gallon shrubs shall be planted in the front of each unit;
 - d. Sod, mulch, and decorative rock are acceptable landscaping materials between the units;
 - e. All landscape areas shall be improved and maintained by an underground automatic sprinkling system;
 - f. Establish a Homeowner’s Association pursuant to the Conditions, Covenants and Restrictions regarding certain aspects of design and construction on the Property to be recorded in the chain of title on the Property (“**Project Declaration**”) that shall be responsible to maintain Plats I and J and consistent with the approved landscaping plans.
- ii. Parties agree fencing will be limited in the Project to ensure common area is accessible to all residents of the Project. Though not required, fencing will only be allowed to enclose the outdoor living areas for the single-family dwellings in Plat J. Refer to “**Exhibit M**” for the location and detail of the outdoor living space. Any such fencing will be vinyl and not exceed six feet in height.

- K. **Right of Entry for Solid Waste Collection.** Parties agree that solid waste collection will occur within the private street right-of-way, provided a Private Property – Right of Entry Agreement is properly filed with Payson City and the terms are satisfied. Developer agrees to provide a signed and notarized agreement for each lot, prior to the issuance of a certificate of occupancy. A copy of the agreement is attached hereto as **“Exhibit K”**.
- L. **Conveyance or Dedication of Required Easements.** Prior to the construction of a particular utility facility, Developer shall convey or dedicate, or cause to be conveyed and dedicated, to the applicable public entity or other applicable utility provider, at no cost, such required utility easements, on or across the Project, as are necessary to facilitate the extension of those required utility services to be constructed, to and throughout, the Project and as are shown on the Plans and Specifications.
- M. **Assurance for Completion of Improvements.** Unless otherwise provided by Chapter 10-9a of Utah Code, Developer agrees to provide a performance guarantee for all infrastructure improvements that will be dedicated to Payson City. The performance guarantee shall be equal to one-hundred-ten percent (110%) of the approved engineer’s cost estimate and, in cash, or in the form of an irrevocable letter of credit. Developer will also submit, in cash, an amount consistent with the Payson City Fee Resolution that will be used to complete public works inspections and testing requirements. Partial releases of any such required security shall be made as work progresses based on the City ordinance.

Developer shall provide, or cause to provide, a performance guarantee to assure completion of required landscaping improvements consistent with the approved landscaping plans and landscape phasing plans. The performance guarantee shall be equal to an approved engineer’s estimate and provided prior to the issuance of a certificate of occupancy within each landscape phase as depicted in **“Exhibits I and J”**. The City shall release such performance guarantee after the completion of the landscaping on any given lot. For avoidance of doubt, if the engineer’s estimate for any specific lot is \$5,000.00, the Developer or respective builder shall place a performance guarantee of \$5,000.00 prior to the issuance of a certificate of occupancy. Following the completion of the landscaping on an individual lot or portions of the landscaping phase, the City shall release the \$5,000.00 to the entity that placed the performance guarantee. Any common area not within a lot will be considered part of the lot immediately adjacent to said lot and included within the engineer’s estimate and applicable performance guarantee. Landscaping shall be defined as the irrigation, planter bed material, sod, shrubs, trees, and other planter materials and shall not include any fencing or other improvement not required by Code or within this Agreement. The performance guarantee shall not be in addition to any bonds otherwise place with a standard building permit or certificate of occupancy due to seasonal constraints of landscaping installation.

N. **Recordation of Project Declaration.** Prior to the Developer's conveyance of any lot or unit in the Project, Developer shall cause to be recorded against the Project the Project Declaration. At a minimum the Project Declaration shall:

- i. Provide for the creation of a Homeowner's Association responsible to maintain the areas of common interest within the Project and with the requisite authority to assess the homeowner's maintenance fees and to enforce the requirements of the Project Declaration. At a minimum the Homeowner's Association shall be responsible to maintain the improvements of common interest within the Project.
- ii. Include information about the architectural details, exterior materials, unit size, and other development standards, and design guidelines deemed necessary and appropriate by the City and the Developer.
- iii. Provide regulations that address the installation, maintenance, and replacement of improvements held in common, including but not limited to private streets and utilities, visitor parking, and project landscaping and fencing. The Declaration will also address restrictions and enforcement of recreational vehicle parking within and surrounding the Project.
- iv. The Project Declaration shall be signed and recorded in the office of the Utah County Recorder and restrict the Project so the Declaration shall run with the land regardless of ownership.

IV. **Vested Rights and Reserved Legislative Powers.**

- A. **Zoning Vested Rights.** The City has zoned the Property as shown on the map adopted by the City specifying the zoning for the Property ("Zoning Map") and the zoning for the Property accommodates and allows all development contemplated by this Agreement including the development rights and uses described herein and depicted on the Master Plan as they relate to the Project. To the maximum extent permissible under the laws of Utah and the United States and at equity, the Parties intend that this Agreement grants the Developer all rights to develop the Project in fulfillment of this Agreement, the City's Vested Laws, the Zoning Map, and the Master Plan, except as specifically provided herein. The Parties specifically intend that this Agreement grants to the Developer Vested Rights as that term is construed in Utah's common law and pursuant to the Utah Code Ann. 10-9a-509. As of the date of this Agreement, the City confirms that the uses, configurations, densities and other development standards reflected in the Master Plan as they related to the Project are approved under, and consistent with, the City's existing laws, Zoning Map and General Plan, under and consistent with the City's existing laws, Zoning Map and General Plan. The Developer shall have the vested right to develop and construct the Project subject to compliance with the terms and conditions of this Agreement and other applicable ordinances and regulations of the City.
- B. **Reserved Legislative Powers.** Developer acknowledges that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited. Notwithstanding the retained power

of the City to enact such legislation under the police powers, such legislation shall only be applied to modify the vested rights of Developer with respect to use under the zoning designations as referenced in Section IV (A), above, under the terms of this Agreement based upon the policies, facts and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah, which the City's land use authority finds, on the record, are necessary to prevent a physical harm to third parties, which harm did not exist at the time of execution of this Agreement, and which harm, if not addressed, would jeopardize a compelling, countervailing public interest pursuant to Utah Code Ann. 10-9a- 509(1)(a)(i) as proven by the City by clear and convincing evidence. Any such proposed change affecting the vested rights of the Project shall be of general application to all development activity in the City; and, unless in good faith the City declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the Project under the compelling, countervailing public interest exception to the vested rights doctrine.

- C. **Application under City's Future Laws.** Future Laws means the ordinances, policies, standards, and procedures which may be in effect as of a particular time in the future when a development application is submitted for a part of the Project and which may or may not be applicable to the development application depending upon the provisions of this Agreement. Without waiving any rights granted by this Agreement, Developer may at any time and in Developer's sole and absolute discretion, choose to submit a development application for the Project under the City's Future Laws, in effect at the time of the development application, so long as the Developer is not in current breach of this Agreement.

- V. **Term.** This Agreement shall be effective as of the date of execution, and upon recordation, shall run with the land and shall continue in full force and effect until all obligations hereunder have been fully performed and all rights hereunder fully exercised; Provided, however, that unless the parties mutually agree to extend the term, this Agreement shall not extend further than a period of twenty (20) years from its date of recordation in the official records of the Utah County Recorder's Office.

VI. **General Provisions.**

- A. **Notices.** All notices, filings, consents, approvals, and other communication provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served if in writing and delivered personally, by nationally recognized overnight courier, or sent by registered or certified U.S. Postal Service mail, return receipt requested, postage prepaid to:

If to City:	The City of Payson 439 W. Utah Ave. Payson, Utah 84651 Attention: City Recorder
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If to Developer: Arrowhead Partners, LLC
 Manager, Terry Harward
 704 N 1890 West
 Provo, Utah 84601

or to such other addresses as either party may from time to time designate in writing and deliver in like manner. Any such change of address shall be given at least ten (10) days before the date on which the change is to become effective.

- B. **Mailing Effective.** Notices given by mail shall be deemed delivered seventy-two (72) hours following deposit with the U.S. Postal Service in the manner set forth above. Notices that are hand delivered or delivered by nationally recognized overnight courier shall be deemed delivered upon receipt.
- C. **Waiver.** No delay in exercising any right or remedy shall constitute a waiver thereof and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach by the same of any other provision of this Agreement.
- D. **Meet and Confer regarding Development Application Denials.** The City and Developer shall meet within fifteen (15) business days of any recommendation for denial by the City staff to resolve the issues specified in the recommendation for denial of a development application.
- E. **Headings.** The descriptive headings of the paragraphs of this Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of any provision of this Agreement.
- F. **Authority.** The parties to this Agreement represent to each other that they have full power and authority to enter into this Agreement and that all necessary actions have been taken to give full force in effect to this Agreement. Developer represents and warrants that each party is fully formed and validly existing under the laws of the State of Utah, and that each party is duly qualified to do business in the State of Utah and each is in good standing under applicable state laws. The Developer and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the parties on whose behalf each individual is signing.
- G. **Entire Agreement.** This Agreement, including exhibits, constitutes the entire agreement between the parties.
- H. **Amendment of this Agreement.** This Agreement may be amended in whole or in part with respect to all or any portion of the Property by the mutual written consent of the Parties to this Agreement or by their successors in interest or assigns. Any such amendment of this agreement shall be recorded in the official records of the Utah County Recorder's Office. The parties acknowledge that the Project is a component of a larger Planned Residential Development.

- I. **Severability.** If any of the provisions of this Agreement are declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect, provided that the fundamental purpose of this Agreement and the Developer's ability to complete the Project is not defeated by such severance.
- J. **Governing Law.** The laws in the State of Utah shall govern the interpretation and enforcement of the Agreement. The parties shall agree that the venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Utah County, Utah and the Parties hereby waive any right to object to such a venue.
- K. **Remedies.** If any party to this Agreement breaches any provision of this Agreement, the non-defaulting party shall be entitled to all remedies available at both law and in equity.
- L. **Attorney's Fee and Costs.** If any party brings legal action either because of a breach of the agreement or to enforce a provision of the agreement, the prevailing party shall be entitled to reasonable attorney's fee and court costs.
- M. **Binding Effect.** The benefits and burdens of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors in interest and assigns.
- N. **Assignment.** The rights of the Developer under this Agreement may be transferred or assigned ("Transfer"), in whole or in part to a third party ("Transferee") upon Developer providing the City written notice of Transferee acknowledging the existence of this Agreement and agreeing to be bound thereby. Developer shall give such notice to the City of any proposed or requested assignment prior to the effective date of such Transfer. The provisions of this paragraph shall not prohibit the granting of any security interests for financing the acquisition and development of the Project, subject to the Developer complying with applicable law and the requirements of this Agreement. The provisions of this paragraph shall also not prohibit Developer's sale of completed subdivision lots within the Project.
- O. **Third Parties.** There are no third-party beneficiaries to this Agreement, and no person nor entity not a party hereto shall have any right or cause of action hereunder.
- P. **No Agency Created.** Nothing contained in the Agreement shall create any partnership, joint venture, or agency relationship between the parties.

[Signatures on following pages]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written:

CITY

ATTEST:

CITY OF PAYSON
A Utah Municipal Corporation

By: *Kim E. Holindrake*
Kim E. Holindrake
Payson City Recorder

By: *William R. Wright*
William R. Wright
Payson City Mayor

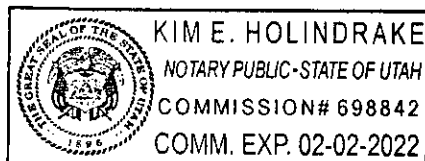
APPROVED AS TO FORM:

By: *David C. Tuckett*
David C. Tuckett
Payson City Manager

STATE OF UTAH)
 : ss.
County of UTAH)

On this 25th day of August, 2020, before the undersigned notary public in and for the said state, personally appeared WILLIAM R. WRIGHT, known or identified to me to be the Mayor of Payson, Utah and the person who executed the foregoing instrument on behalf of said City and acknowledged to me that said City executed the same.

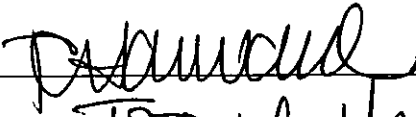
IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.



Kim E. Holindrake
Notary Public for Utah

DEVELOPER

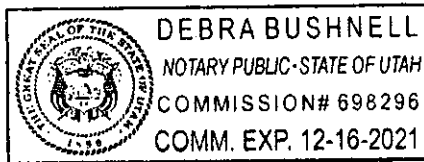
ARROWHEAD PARTNERS, LLC
a Utah limited liability company

By: 
Printed Name: TERRY C. HARWARD
Title: Manager

STATE OF UTAH)
 : ss.
County of Utah)

On this 19 day of August, 2020, before the undersigned notary public in and for the said state, personally appeared Terry C. Harward, known or identified to me to be a Manager of ARROWHEAD PARTNERS LLC, a Utah limited liability company, and the person who executed the foregoing instrument on behalf of said Company and acknowledged to me that said Company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year first above written.



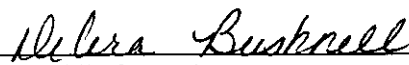

Notary Public for Utah

Exhibit "A"

(Legal Descriptions)

PLAT I, VILLAGES AT ARROWHEAD PARK

A PORTION OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 9 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED S0°28'54"E ALONG THE SECTION LINE 780.24 FEET AND EAST 428.98 FEET FROM THE NORTHWEST CORNER OF SECTION 3, TOWNSHIP 9 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 68.00 FEET; THENCE N14°01'43" W 11.98 FEET; THENCE ALONG THE ARC OF A 42.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT (RADIUS BEARS: S14°01'43"E) 10.28 FEET THROUGH A CENTRAL ANGLE OF 14°01'43" (CHORD: N82°59'08"E 10.26 FEET); THENCE EAST 49.88 FEET; THENCE N5°31'28"W 391.10 FEET; THENCE S89°59'08"E 245.42 FEET; THENCE ALONG THE ARC OF A 11.00 FOOT RADIUS CURVE TO THE RIGHT 15.92 FEET THROUGH A CENTRAL ANGLE OF 82°56'00" (CHORD: S48°31'08"E 14.57 FEET); THENCE S7°03'03"E 298.62 FEET; THENCE ALONG THE ARC OF A 134.00 FOOT RADIUS CURVE TO THE RIGHT 16.47 FEET THROUGH A CENTRAL ANGLE OF 7°02'33" (CHORD: S3°31'47"E 16.46 FEET); THENCE S0°00'30"E 136.66 FEET; THENCE ALONG THE ARC OF A 11.00 FOOT RADIUS CURVE TO THE RIGHT 17.28 FEET THROUGH A CENTRAL ANGLE OF 89°59'18" (CHORD: S44°59'30"W 15.56 FEET); THENCE WEST 302.53 FEET TO THE POINT OF BEGINNING.

CONTAINS: ± 2.90 ACRES

PLAT J, VILLAGES AT ARROWHEAD PARK

A PORTION OF THE NORTHWEST QUARTER OF SECTION 3 AND THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 9 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LOCATED S0°28'54"E ALONG THE SECTION LINE 846.55 FEET AND EAST 140.17 FEET FROM THE NORTHWEST CORNER OF SECTION 3, TOWNSHIP 9 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE ALONG THE ARC OF A 10.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (RADIUS BEARS: N50°22'52"W) 13.23 FEET THROUGH A CENTRAL ANGLE OF 75°47'23" (CHORD: N1°43'27"E 12.28 FEET); THENCE N36°10'14"W 264.87 FEET; THENCE ALONG THE ARC OF A 114.00 FOOT RADIUS CURVE TO THE RIGHT 71.97 FEET THROUGH A CENTRAL ANGLE OF 36°10'14" (CHORD: N18°05'07"W 70.78 FEET); THENCE NORTH 232.19 FEET; THENCE ALONG THE ARC OF A 77.00 FOOT RADIUS CURVE TO THE RIGHT 120.97 FEET THROUGH A CENTRAL ANGLE OF 90°00'52" (CHORD: N45°00'26"E 108.91 FEET); THENCE S89°59'08"E 643.19 FEET; THENCE ALONG THE ARC OF A 11.00 FOOT RADIUS CURVE TO THE LEFT 18.64 FEET THROUGH A CENTRAL ANGLE OF 97°03'57" (CHORD: N41°28'56"E 16.49 FEET); THENCE S7°03'03"E 88.67 FEET; THENCE ALONG THE ARC OF A 11.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT (RADIUS BEARS: S82°56'54"W) 15.92 FEET THROUGH A CENTRAL ANGLE OF 82°56'00" (CHORD: N48°31'06"W 14.57 FEET); THENCE N89°59'08"W 245.42 FEET; THENCE S5°31'28"E 391.10 FEET; THENCE WEST 49.88 FEET; THENCE ALONG THE ARC OF A 42.00 FOOT RADIUS CURVE TO THE LEFT 10.28 FEET THROUGH A CENTRAL ANGLE OF 14°01'43" (CHORD: S82°59'08"W 10.26 FEET); THENCE S14°01'43"E 11.98 FEET; THENCE SOUTH 68.00 FEET; THENCE WEST 147.29 FEET; THENCE ALONG THE ARC OF A 183.00 FOOT RADIUS CURVE TO THE LEFT 160.91 FEET THROUGH A CENTRAL ANGLE OF 50°22'52" (CHORD: S64°48'34"W 155.78 FEET) TO THE POINT OF BEGINNING.

CONTAIN ±6.25 ACRES

Exhibit "B" (Adopting Resolution)

RESOLUTION NO. 08-05-2020 -B

RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A DEVELOPMENT AGREEMENT ON BEHALF OF PAYSON CITY, BETWEEN PAYSON CITY, A MUNICIPAL CORPORATION AND THE DEVELOPER OF THE VILLAGES AT ARROWHEAD PARK SUBDIVISION, PLATS I AND J.

WHEREAS, Payson City, acting pursuant to its authority under Utah Code Annotated 10-9a-102 (2) et seq., as amended and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations, has made certain determinations with respect to the development and, in exercise of its legislative discretion, has elected to enter into this Agreement; and

WHEREAS, Developer is the owner of certain real property located in Payson, Utah and desires to develop a portion of the Developer's property and is willing to design and construct the project in a manner that is in harmony with and intended to promote the long range policies, goals, and objectives of the Payson City General Plan, zoning, overlay zoning, development regulations, plans and specifications in order to receive the benefit of vesting for certain uses and zoning designations under the terms of this Agreement as more fully set forth therein; and

WHEREAS, Developer has prepared and presented to the City land-use applications for forty-three (43) single-family dwellings and forty-eight (48) twin home units, with open space and project amenities herein referred to as the Villages at Arrowhead Park Subdivision, Plats I and J; and

WHEREAS, Developer and City desire to allow the Developer to make improvements to the Property and develop the Project in accordance with the Final Plat and the Plans and Specifications and Terms and Conditions of the Development Agreement for the Villages at Arrowhead Park Subdivision, Plats I and J in Payson City,

NOW THEREFORE, BE IT RESOLVED BY THE PAYSON CITY COUNCIL, that Mayor William R. Wright is authorized and directed to execute the attached Development Agreement for the Villages at Arrowhead Park Subdivision, Plats I and J in Payson City,

This Resolution shall take effect immediately upon its passage by the Payson City Council adopted in a public meeting.

Passed and adopted by the Payson City Council, Utah, and effective this 5th day of August, 2020.


William R. Wright, Mayor

Attest:

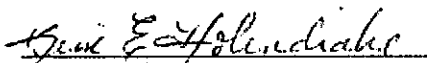

Kim E. Holindrake, City Recorder



Exhibit "C"
(Approved Road Detail)

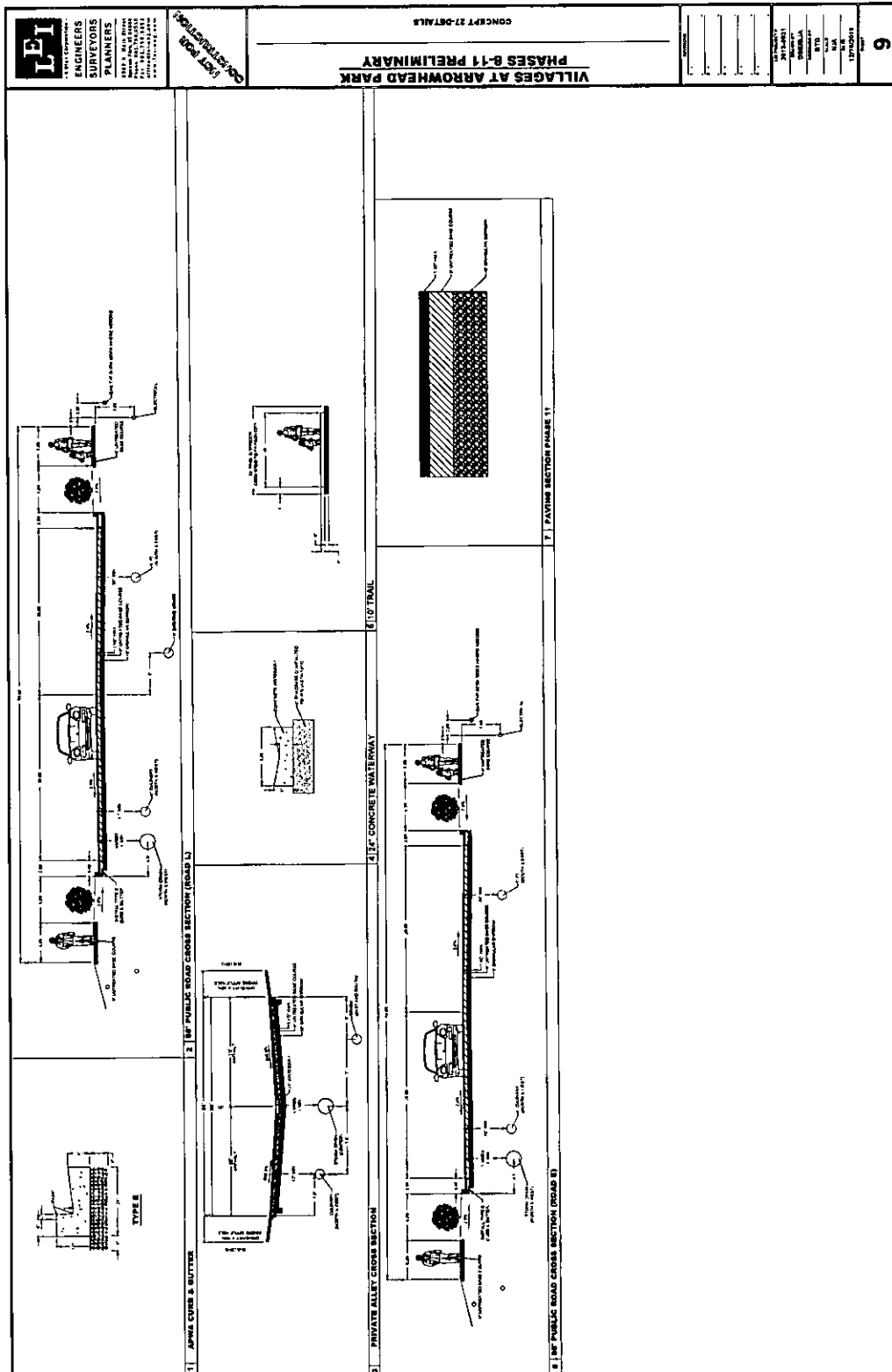


Exhibit "D" (Project Landscaping Plan Plat J)

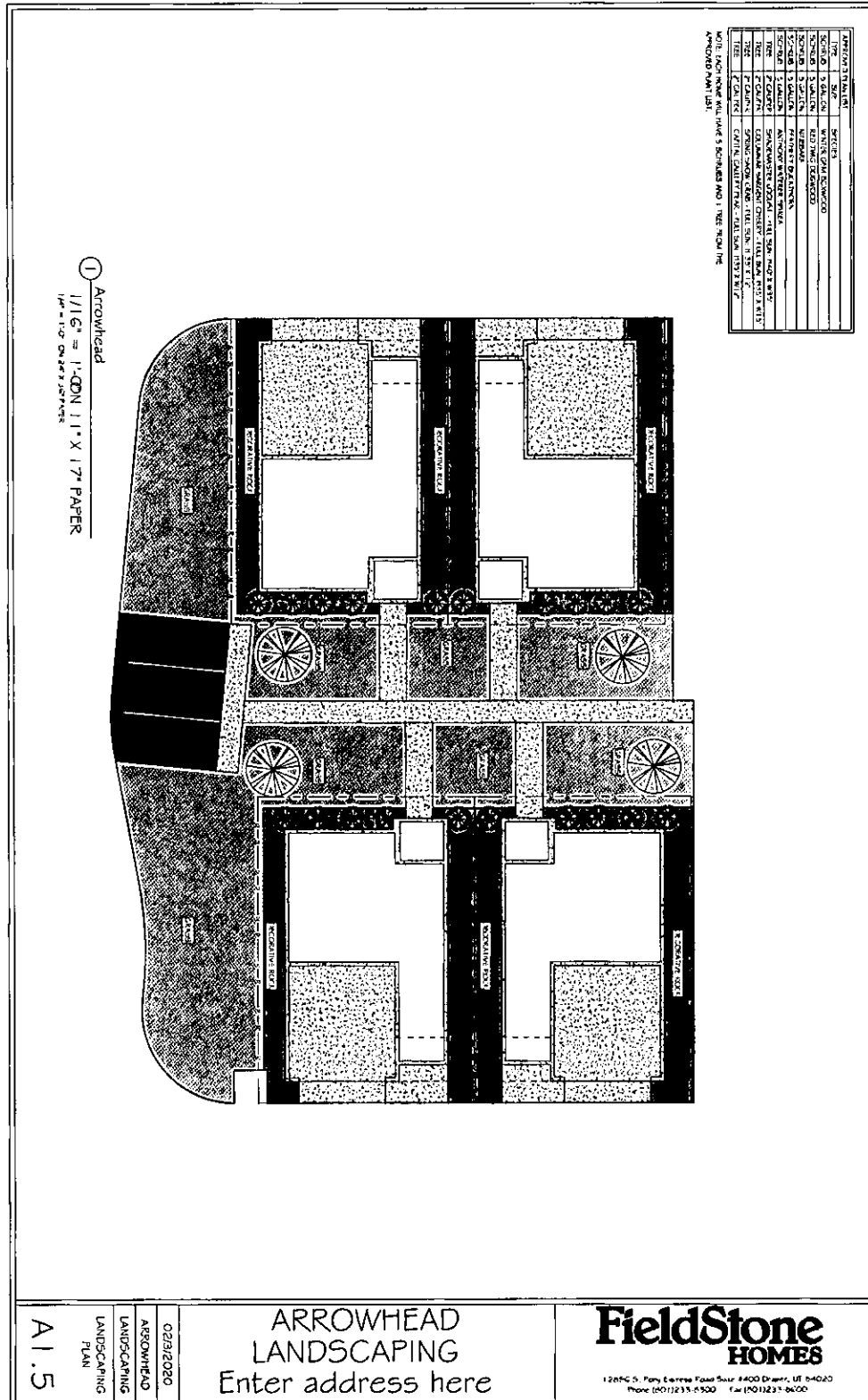


Exhibit "E"

(Residential Dwelling Design Elements Plat J)

1 of 3

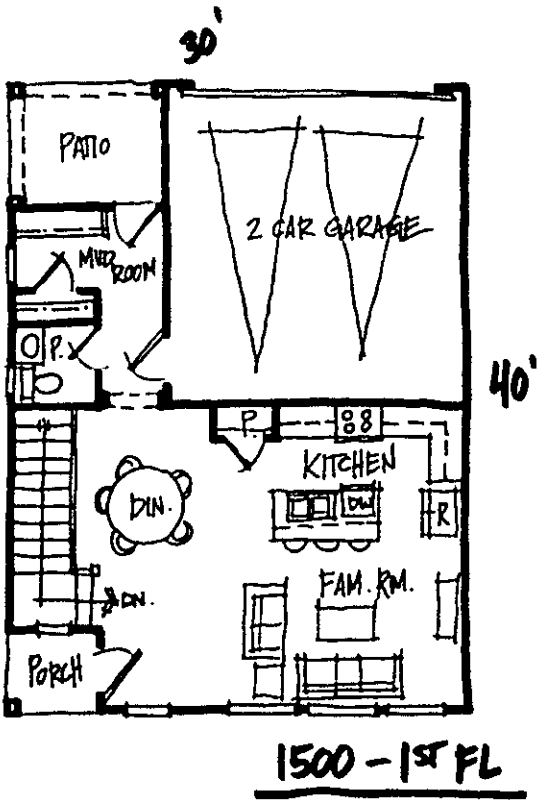
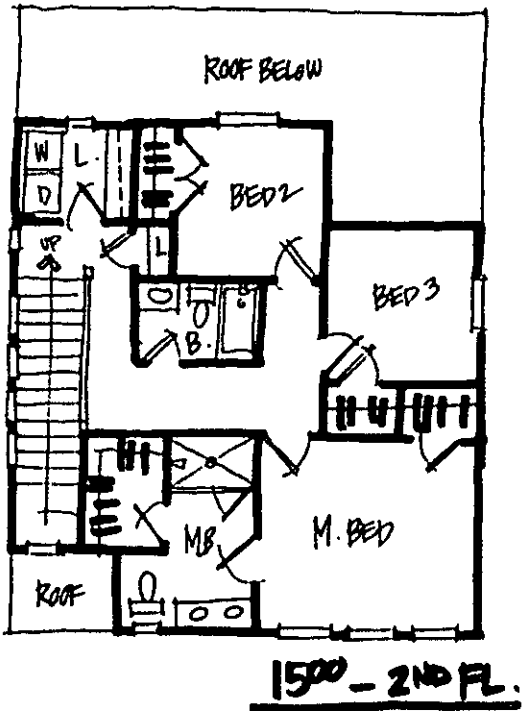
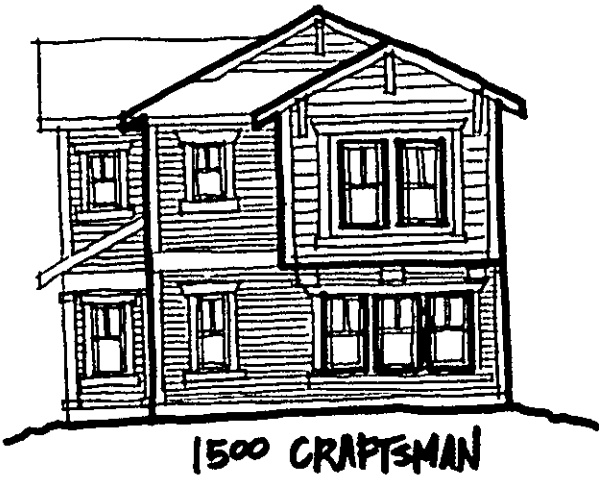


Exhibit "E"
(Residential Dwelling Design Elements Plat J)

2 of 3

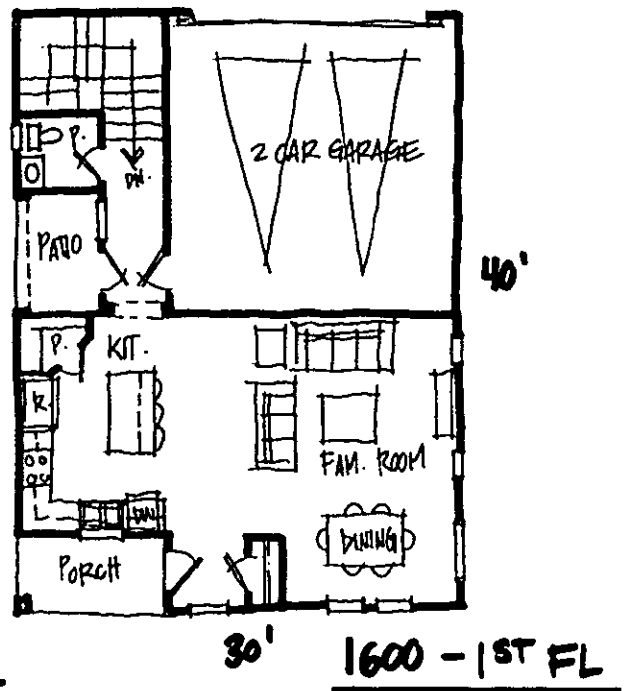
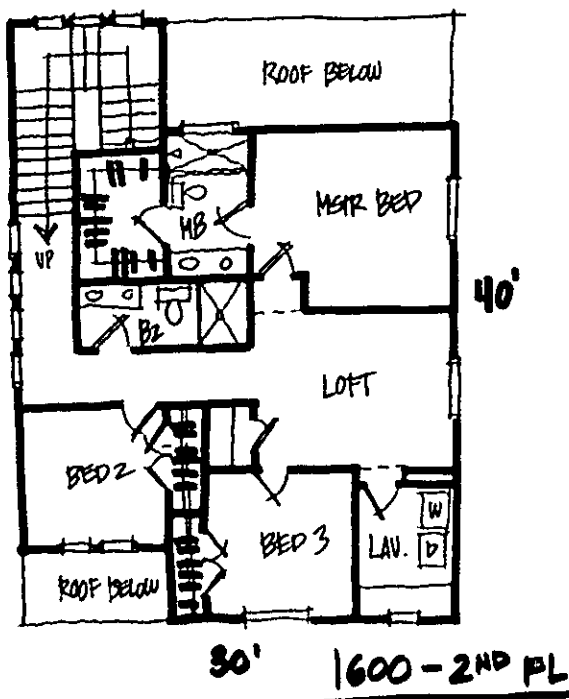
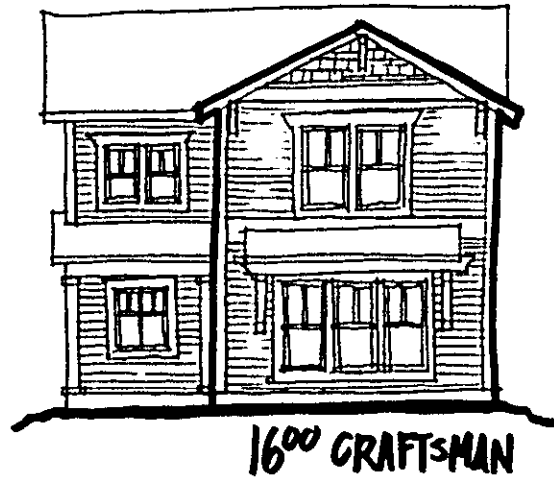
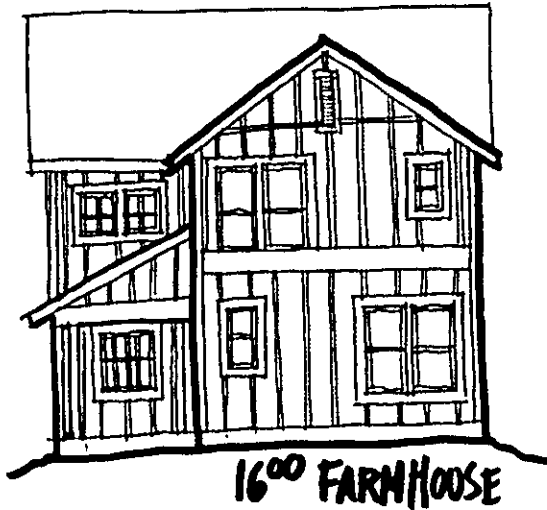
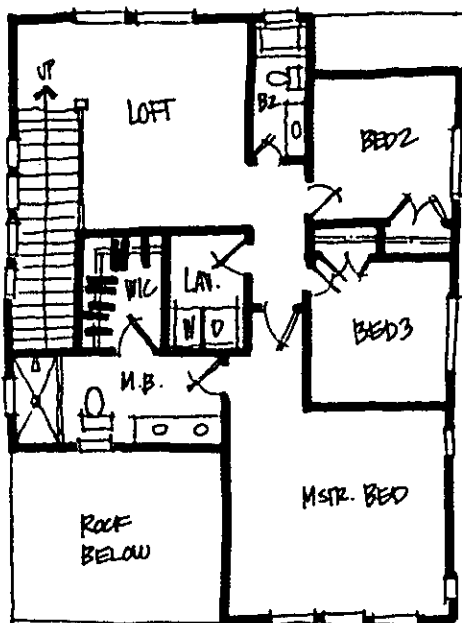
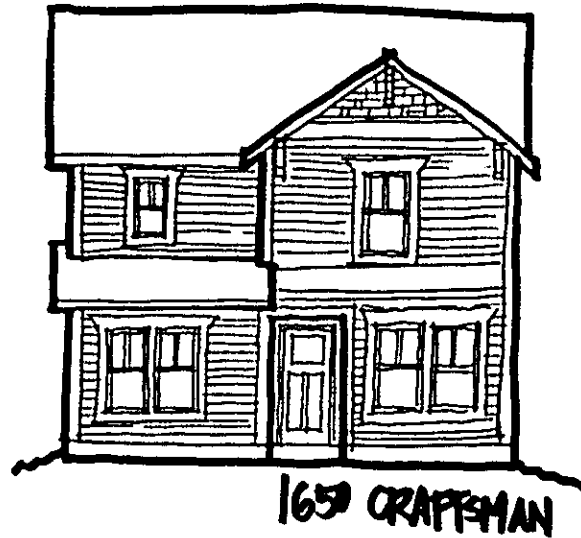
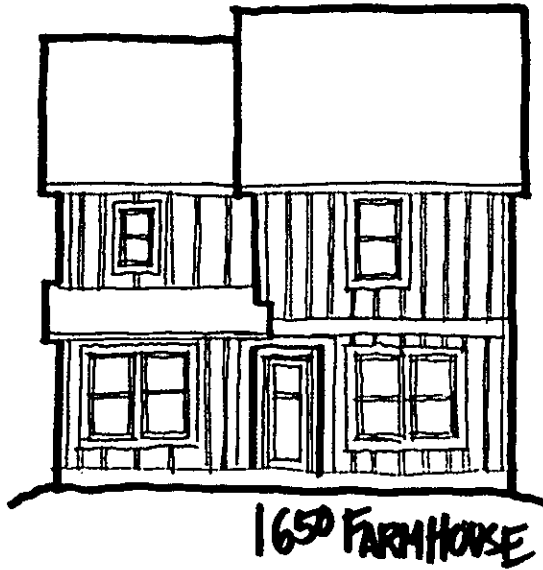
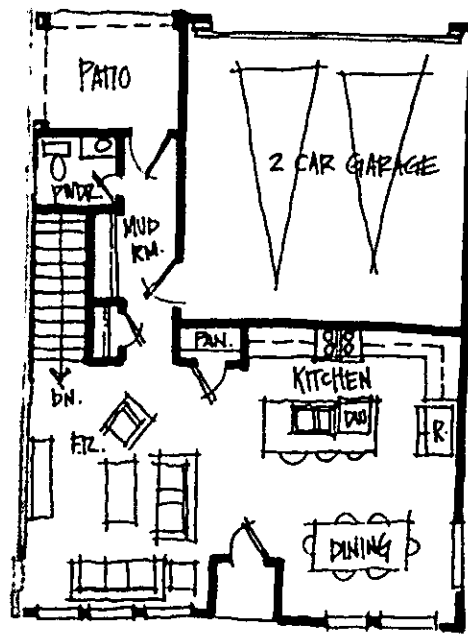


Exhibit "E"
(Residential Dwelling Design Elements Plat J)

3 of 3



1650 - 2ND FL



1650 - 1ST FL

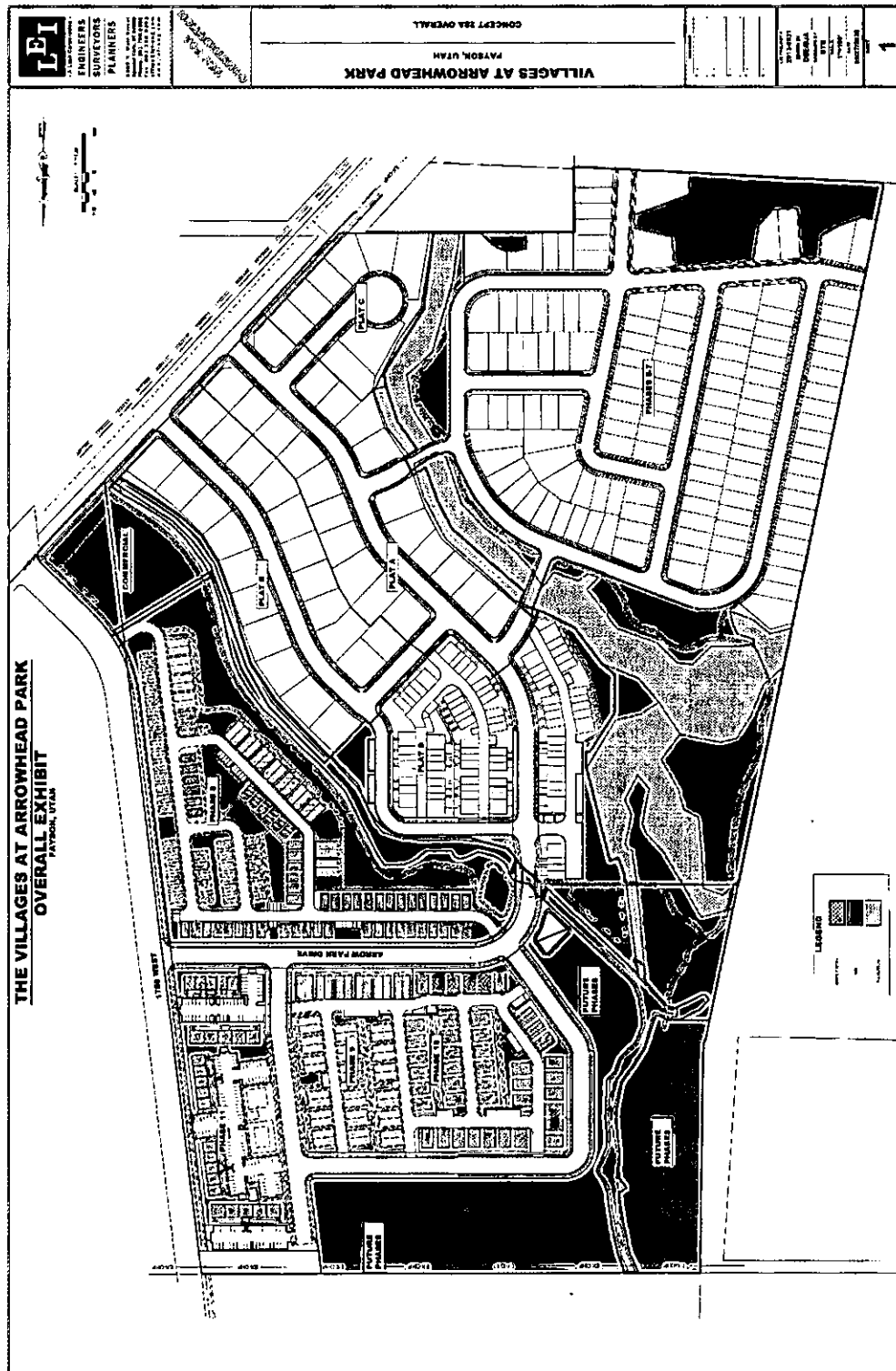


Exhibit "G"
(Project Landscaping Plan Plat I)
1 of 2

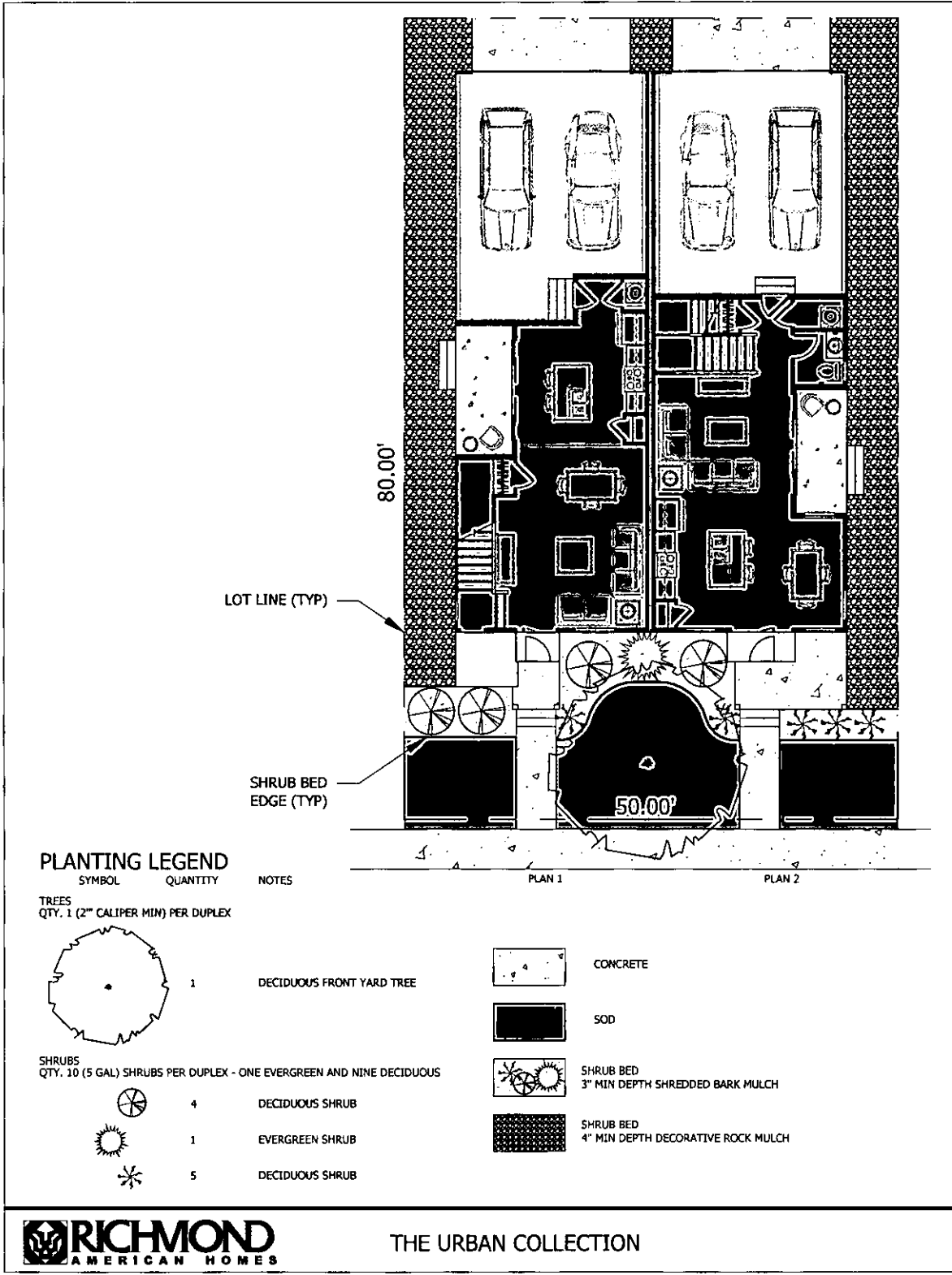


Exhibit "G" **(Project Landscaping Plan Plat I)** **2 of 2**

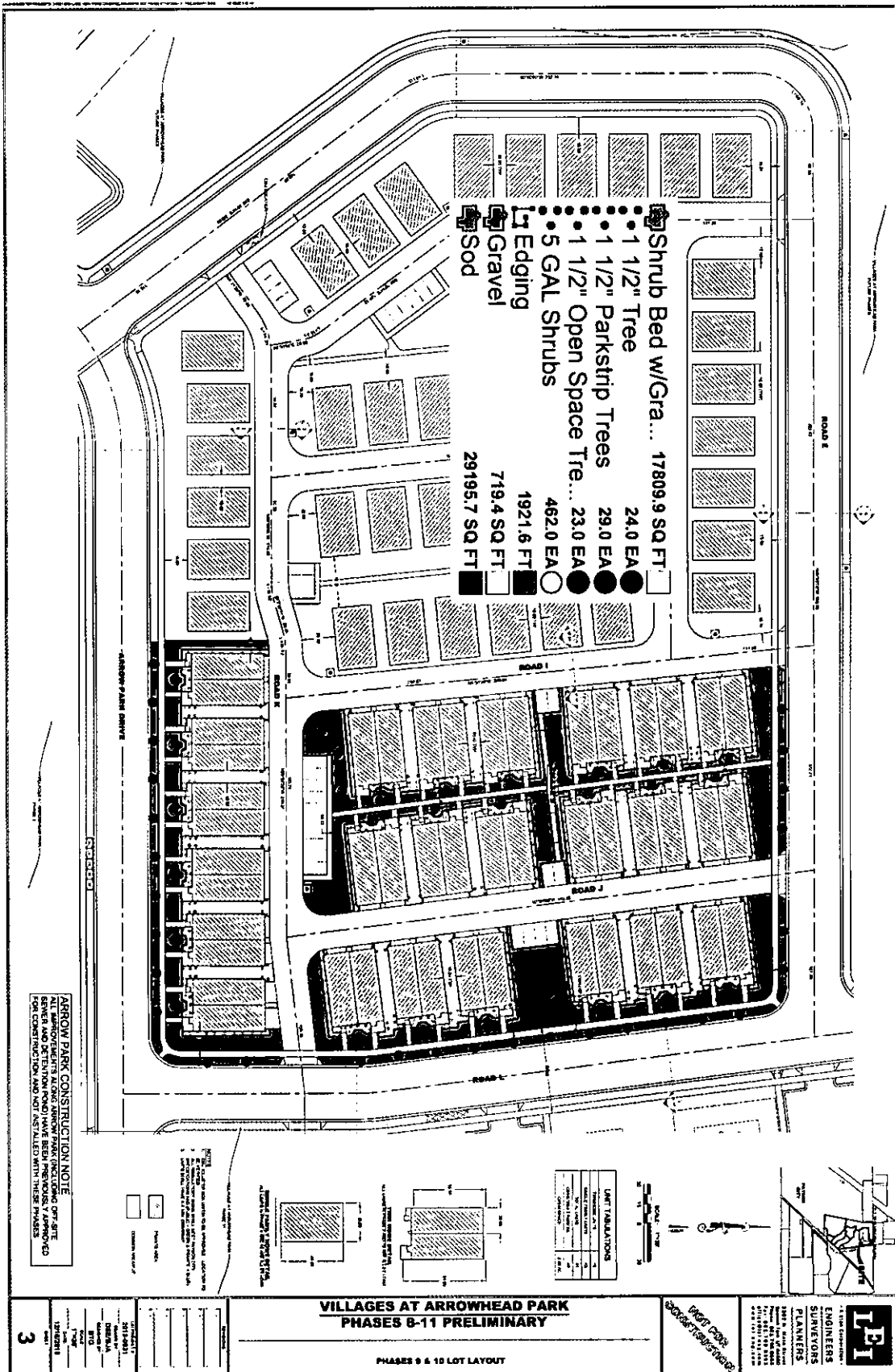


Exhibit "H"
(Twin Home Dwelling Design Elements Plat I)



Exhibit "I" (Landscape Phasing Plan Plat I)

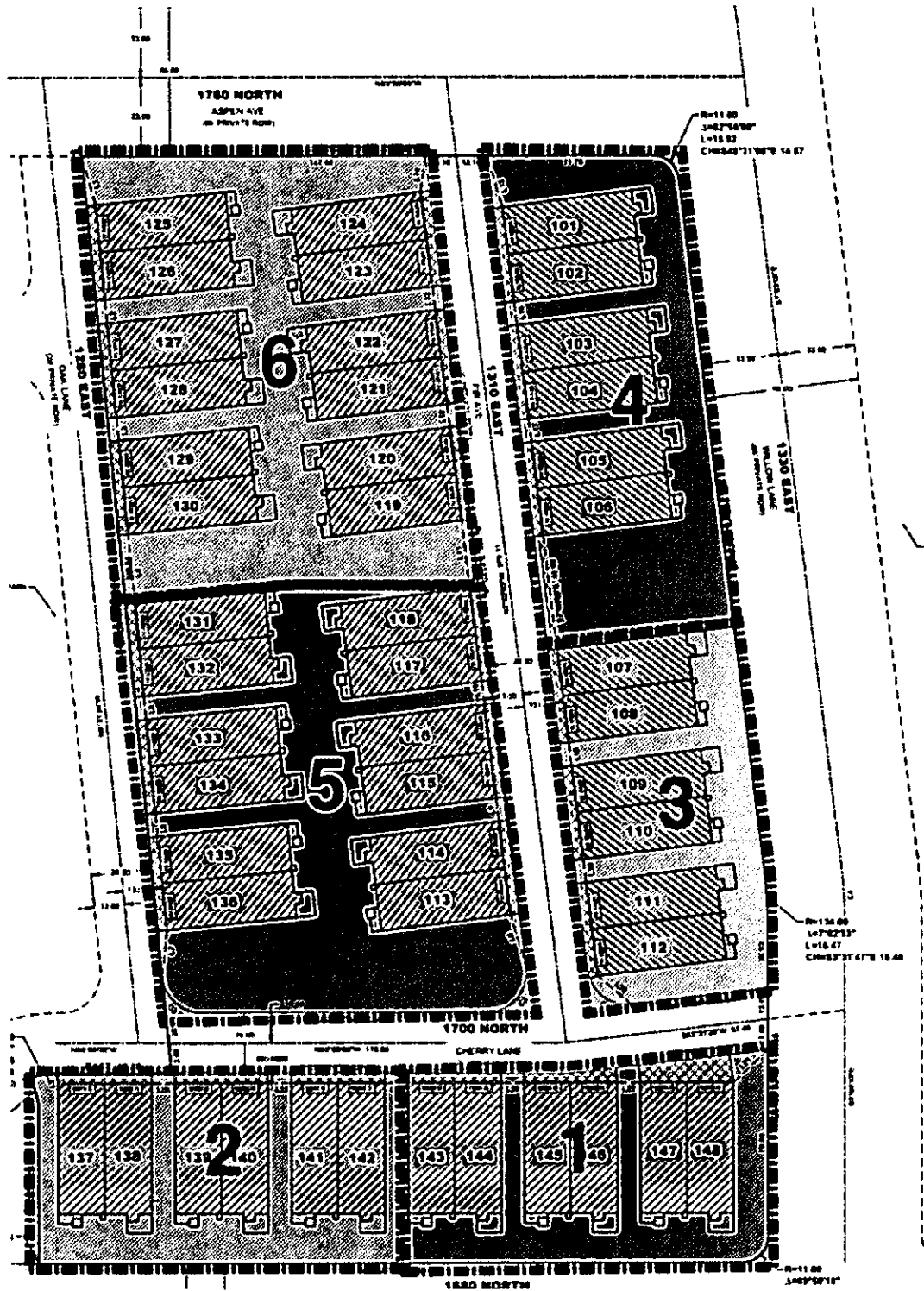
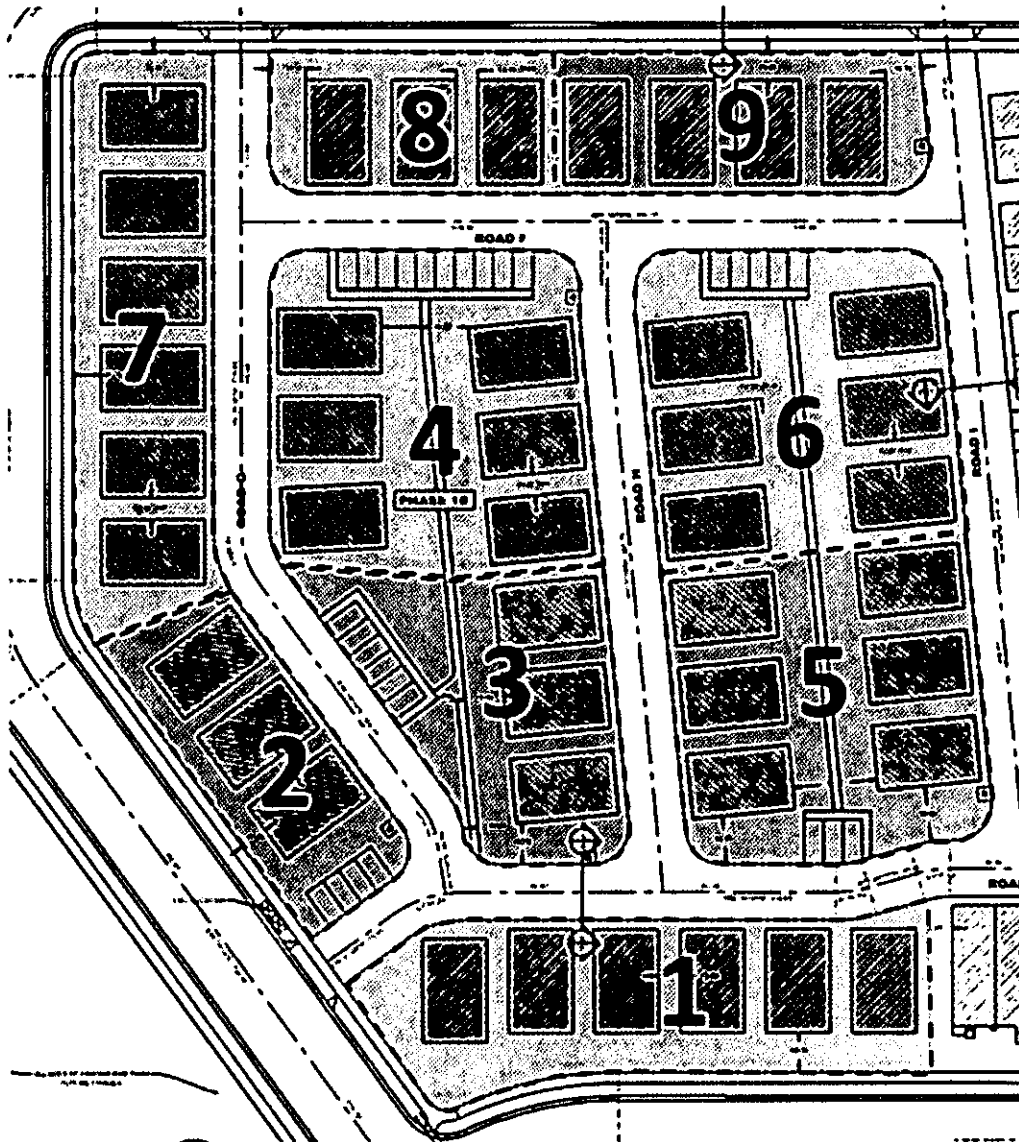


Exhibit "J"
(Landscape Phasing Plan Plat J)



***Conceptual Landscaping Install Phasing**

EXHIBIT "K"**Private Property — Right of Entry****Waste Collection for Land Located on Private Property**

Utility:

Mailing Address:

Office Location:

Registered Association Name _____ Phone # _____

In consideration of the benefits accruing to me/us and to be delivered by me/us for the collection of waste, organics and recyclable materials, I/ we the undersigned, Owner(s) of the said land, do hereby:

- 1) agree to make all reasonable efforts to ensure easy access to the land by the City for the purpose of collecting all waste, organics and recyclable materials
- 2) permit the use on the land of such equipment and materials as the City considers necessary, which, without limiting the generality of the foregoing, shall include waste collection vehicles and containers and
- 3) grant permission to Payson City, its employees, servants, agents, contractors and those that have been duly appointed (herein collectively called "the City"), the right, license, liberty, privilege to enter upon the following land, namely at a location on the land as shown in the site plan attached.

Property address _____ Subdivision _____

Legal description Lot _____ or Condo Unit _____ Block _____ Plan _____

(if applicable) Quarter Section Township Range Meridian

And in consideration of the benefits and the performance of the work as aforesaid I/we do hereby fully release and discharge the said City and its employees, servants, agents, contractors and assigns from any and all claims, demands, or actions for damages, costs, loss of services, disbursements and any and all other claims for damages whatsoever, both in law and in equity, on account of, or in any way resulting from personal injuries, death or property damage sustained by me, and waive any right, cause of action or other claim of whatever kind which I/we might have against the City, arising out of or incidental to anything done or not done in the performance of the said work, save and except for the negligence of the City.

The City shall provide the waste collection services between the hours of 6:30 a.m. and 9:00 p.m. on the specified designated collection day (to be determined by the City and communicated with the Owner). In the event of emergencies or special events, the City may have access outside the designated collection day to ensure waste collection services are complete

The City is mitigating driveway and/or road damage by providing waste collection utilizing a collection vehicle. The City will therefore not be liable for regular wear and tear to the Owner's driveway or access road. I/we agree to hold harmless and indemnify the City from any and all liability for any property damage, personal injury to any third party or other financial loss or expense, including legal expenses and costs (on a solicitor and his own client basis), which arise out of, or incidental to anything done or not done in the performance of the said work, except for the negligence of the City.

This Right of Entry shall commence July 1, 2020

Dated on this _____ day of _____, 20_____.

Registered Owner

Witness

Collection and use

Personal information is subject to the Utah Government Records Access and Management Act (GRAMA) and is managed in accordance with the provisions of GRAMA. This information will be used to ensure the necessary rights are in place in order to provide waste collection to your residence. If you have any questions about the collection and use of your personal information, contact Customer Assistance, Utilities, and Payson City at 801-465-5217.

Site conditions:

1. Owner/ Association assures uninhibited access to allow for trash collection vehicles
2. Parking will not be allowed on streets on collection day
3. Snow and ice removal will be performed by owner/association for safety

Special note:

Trash collection will not be performed if any access is denied or safety issues occur to prevent safe collection and access by trash collection vehicles. City will notify owner/association of access and or safety issues

Exhibit "L" (City Letter)



January 13, 2020

Arrowhead Partners, LLC
Att: Terry Harward
704 North 1890 West, #41A
Provo, Utah 84601

Re: North Payson Annexation Specific Plan and Annexation Agreement

Dear Mr. Harward:

I have received your request for Payson City to draft a letter addressing a potential issue between the North Payson Annexation Specific Plan and Annexation Agreement (Annexation Agreement) and the Amended Development Agreement between Arrowhead Partners, LLC and Payson City (Development Agreement).

The Annexation Agreement prohibits the construction of more than 200 residential units in any calendar year within the North Payson Annexation. The Development Agreement allows up to 400 residential units to be built on the single source system before the pressurized irrigation system needs to be installed. The 400 units were determined by water modeling conducted by Hansen, Allen & Luce.

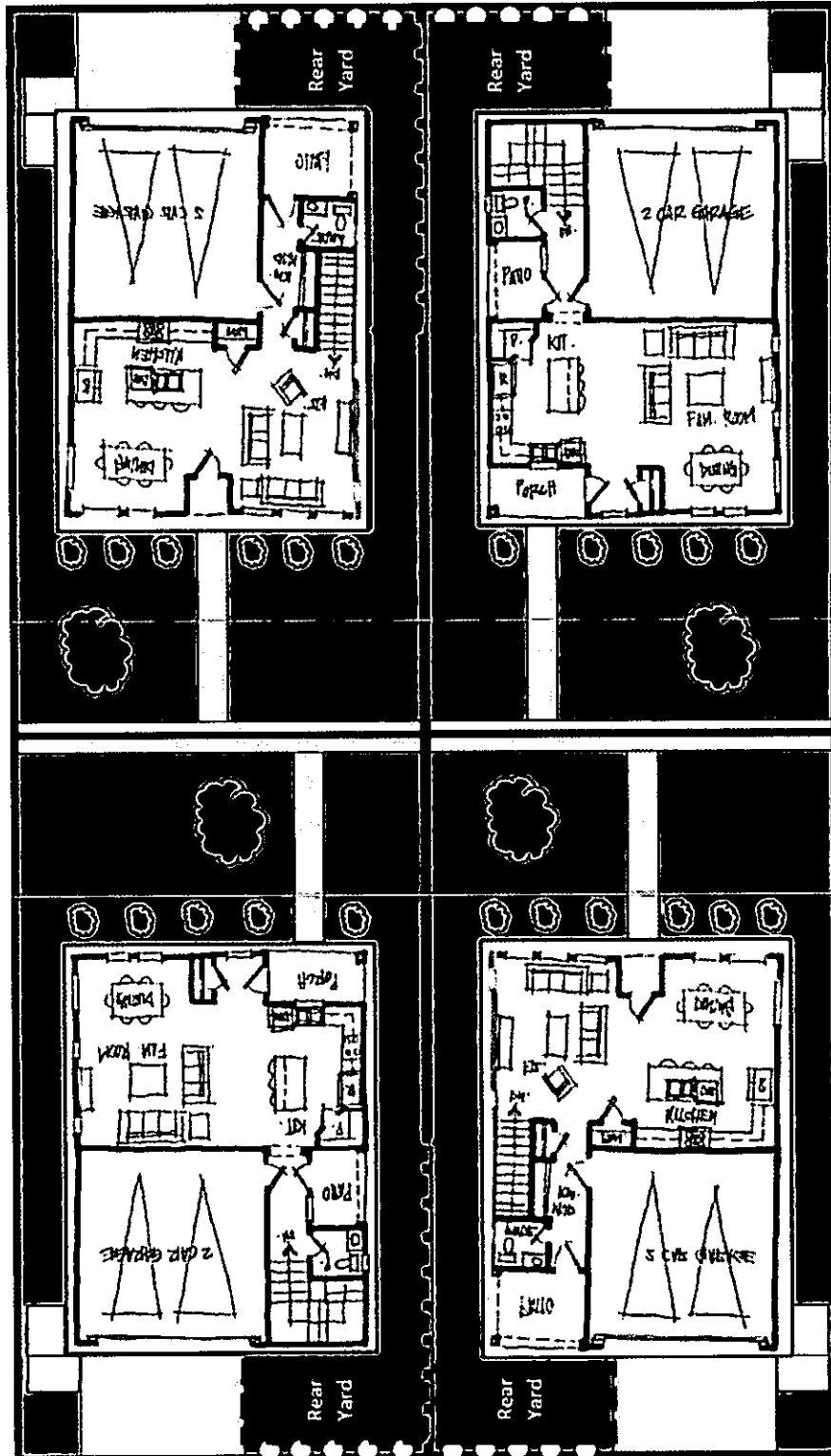
The 400 units are not restricted by any calendar year. Due to the water modeling conducted by Payson City's consultant, Payson City agrees that 400 units may be built in the North Payson Annexation area without the restriction of the 200 units per calendar year.

Regards,


David C. Tuckett
Payson City Manager

cc: Development Services
Mayor & Council

Exhibit "M" **(Example of Outdoor Living Area)**



Rear Yard/Outdoor Living Area Fenced Area