

## DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered into this 7th day of September, 2016 by and among the City of Payson, a Utah municipal corporation, hereafter referred to as "City" and R & C, LLC, a Utah limited liability company, hereafter referred to as "Developer". The Developer is the owner of the property contained in the "Sterling Grove Subdivision" (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 improve 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 Sterling Grove Subdivision is generally located between 500 North and 800 North and between Interstate 15 and 100 West, Payson, Utah and encompasses Utah County Parcel Numbers 30:025:0004 (portion), 30:026:0079, 30:026:0080 and 30:026:0110, with the legal description being contained in **Exhibit "A"** attached hereto and incorporated herein by this reference.

D. Developer has prepared and presented to the City land use applications for a residential subdivision to be known as the Sterling Grove Subdivision, hereafter referred to as the "Project". The application package was submitted and reviewed by the 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 final approved subdivision plat is referred to herein as the "Final Plat" and the approved construction drawings and associated studies and plans are referred to herein as the "Plans and Specifications."

E. In addition to the request for preliminary and final approval of the Sterling Grove Subdivision, Developer requested City Council action resulting in a zone change from the existing zoning designation of S-1, Special Highway Service to a zoning designation of R-2-75, Residential and approval of the RMO-1, Two-Family Residential Overlay Zone as provided for in Section 19.6.8 of the Payson City Municipal Code. These approvals were granted through the legislative authority of the Payson City Council, in consideration of the implementation of the provisions of this Agreement including design standards and amenities, which will be implemented through this Agreement.

F. 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.

G. 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, 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.

H. 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 09-07-2016D, 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 Description of Property  
 Exhibit B – Adopting Resolution  
 Exhibit C – Project Design and Landscaping

- III. **Developer Obligations.**

- A. **Completion of the Project.** Developer agrees to construct and complete the Project in accordance with the approved Preliminary Plan, Final Plat and the Plans and Specifications (collectively, the “**Work**”) and dedicate to the City all 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. Any modification from the approved project drawings must be approved in writing by both Developer and City.

The Payson City Council granted Preliminary Plan approval on June 15, 2016 and Final Plat approval on July 6, 2016. Both approvals were contingent upon the satisfaction of certain conditions. Developer hereby agrees to satisfy all conditions imposed by the Payson City Council in conjunction with Preliminary Plan and Final Plat approval as such conditions pertain or relate to the Project.

All infrastructure, roadways, and amenities in the Project must be completed, inspected and approved prior to the issuance of any building permits in the Project or any phase thereof. Any undeveloped portions of the property must be maintained consistent with the provisions of Chapter 19.24, City Beautification of the Payson Zoning Ordinance.

- B. **Project Density and Lot Arrangement.** The Project was approved in accordance with Title 19, Zoning Ordinance and Title 20, Subdivision Ordinance of the Payson City Municipal Code. Developer agrees to satisfy the minimum requirements of the land use ordinances and the standard specifications and standard plans of Payson City, together with the conditions imposed by the City Council.

The Project consists of ten (10) twin home structures and twenty-five (25) single family dwelling lots for a total of forty-five (45) new residential units. 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 land use ordinances of Payson City adopted and in effect at the time of the signing of this Agreement, together with the Plans and Specifications for the Project.

- C. **Building Design and Landscaping.** The Developer made various commitments to the Payson City Council to obtain approval of the land use applications.

i. Developer shall complete the following improvements for the new residential units:

- a. Each unit shall contain at least fourteen hundred (1400) square feet of finished floor area above grade, exclusive of open porches and garages. No dwelling shall exceed two stories in height above finished grade.

- b. The units in the Project shall contain variations in colors, materials, elevation details, rooflines, and other features to avoid a tract feel in the Project. No two adjacent homes or homes across the street will be the same elevation.
- c. The primary construction element of each unit shall be hard surface materials to include brick, stone, stucco and cementitious fiber board with the exception of roofing materials, eaves, doors, windows, and other similar architectural elements. Vinyl or aluminum siding will not be allowed. Large areas of stucco should be broken up through the use of colors, textures, and wall articulation.
- d. The front elevation of the structure shall have at least fifty percent (50%) brick or stone or combination thereof. The required percentage is exclusive of doors, windows, and gable areas. On corner lots, the side elevation must include, at a minimum, a wainscot, at least four (4) feet above the finished grade, of brick or stone.
- e. Each unit shall contain an attached two-car garage that measures no less than twenty (20) feet by twenty (20) feet. Side entry garages are encouraged on corner lots. 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.

- ii. The landscaping requirements of Section 20.17.13 of Title 20, Subdivision Ordinance and the requirements included herein must be implemented prior to the issuance of an occupancy permit for any new residential structure. Developer shall complete the installation of landscaping as follows:
  - a. Single family dwelling lots: All open areas between the public street, including the planter strip, and the front line of the primary structure shall be landscaped prior to the issuance of a certificate of occupancy. If a dwelling is located on a corner lot, all areas of the front and side areas between the public street and the dwelling shall be appropriately landscaped.
  - b. Twin home lots: All areas not used for buildings or required parking must be completely landscaped prior to the issuance of a certificate of occupancy. The landscaping must be consistent with the approved landscaping plan attached to this Agreement as **Exhibit "C"** and improved and maintained by an underground automatic sprinkling system.

D. **Setbacks.** Approval for use of the RMO-1 Overlay Zone does not grant any type of exception or waiver to the setback requirements of the R-2-75, Residential Zone. The footprint of each structure must be designed and situated on the property in a manner that satisfies the setback requirements of the underlying zone.

E. **Cul-de-sac.** City agrees to allow the width of the cul-de-sac to be reduced contingent upon the approval by the Payson City Fire Chief. To satisfy the requirements of the adopted fire code and ordinances, Developer agrees to paint the curb in the cul-de-sac red and install and maintain No Parking signs along the roadway (125 West street). Furthermore, Developer agrees to provide snow pushout areas and ensure these areas are not obstructed.

F. **Land use transition.** Because the development is located adjacent to Interstate 15 and a commercial zoning district, use transition methods must be implemented. Developer agrees to install a six (6) foot decorative precast concrete wall along Interstate 15 and the lots adjacent to the commercial properties. Furthermore, Developer agrees to plant and maintain a row of trees along the east property line to reduce noise and lighting impacts from adjacent commercial uses. Appropriate guarantees, such as deed restrictions, shall be included for lots that contain the fencing and landscaping ensuring that future owners will be responsible for

the upkeep, maintenance, graffiti removal, damage, etc. to the improvements. Failure to do so will be a violation of this Agreement and the Payson City Municipal Code.

- G. **Grading and Slope Stabilization.** Improvements on the lots must be completed in a manner that controls runoff from impervious cover and slopes steeper than 2:1 must be properly retained. Retaining walls, berms, anchors, and other slope stabilization techniques must be properly design, and possibly engineered. A grading and stabilization plan will need to be prepared that addresses lot to lot drainage, imported fill and compaction, and other slope stabilization methods. Stabilization methods must be properly designed and approved by Payson City prior to installation.
- H. **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.
- I. **Dedication of Water.** An adequate amount of water shares shall be transferred into the name of Payson City, together with an approval of the transfer from the State Water Engineer and the approval of the change in point of diversion to a location approved by City. The transfer and diversion may be approved by City for a single phase, or any number of phases, but the Final Plat of any phase shall not be recorded until such transfer and diversion has been completed.
- J. **Assurance for Completion of Improvements.** Developer agrees to provide a performance guarantee for all infrastructure improvements that will be dedicated to Payson City, required landscaping and project amenities. The performance guarantee shall be equal to one hundred twenty (120) percent 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. Developer will provide, in cash, the amount necessary to complete the one (1) inch asphalt overlay for all roadways in the Project once ninety (90) percent of the dwelling in the Project have been constructed.
- K. **Recordation of Project Declaration.** Prior to the Developer's conveyance of any Lot in the Project, Developer shall cause to be recorded against the Project a Declaration of Covenants, Conditions and Restrictions (the "Project Declaration"). At a minimum, the Project Declaration shall:
  - i. Include information about the acceptable building styles and standards for the Project, including acceptable building styles and architectural details, exterior materials, dwelling size, and other development standards deemed necessary and appropriate by the City and Developer,
  - ii. The Project Declaration shall be signed and recorded in the office of the Utah County Recorder and deed restrict the Project so the CC&R's shall run with the land regardless of ownership.

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

- A. **Vested Rights.** Developer shall have the vested right to develop and construct the Project in accordance with the R-2-75 zoning designation and the Final Plat and the Plans and Specifications, subject to compliance with the terms and conditions of this Agreement and the 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. Any such proposed change affecting the vested rights of the Project shall be of general application to all development activity in the County; 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.

**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 Avenue  
Payson, Utah 84651  
Attention: City Recorder

If to Developer: R & C, LLC  
445 North 250 West  
Payson, Utah 84651

From time to time, either party may, in writing, designate an alternate mailing address. 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 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 and 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.

**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 of 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 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 fees 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 not be transferred or assigned, in whole or in part except by written approval of the City. Developer shall give notice to the City of any proposed or requested assignment at least thirty (30) days prior to the effective date of the assignment. City shall not unreasonably withhold its consent to assignment. 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 or 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 page]*

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,  
Payson City Deputy Recorder

By:

Richard D. Moore,  
Payson City Mayor



APPROVED AS TO FORM:

By:

Mark A. Sorenson,  
Payson City Attorney

## DEVELOPER

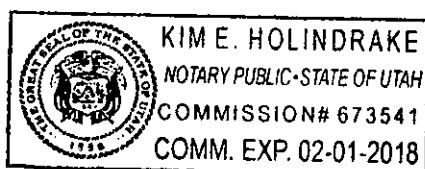
R &amp; C, LLC, a Utah limited liability company

By: Justin HillPrinted Name: Justin HillTitle: Member/Manager

STATE OF UTAH )  
: ss.  
County of Utah )

On this 29<sup>th</sup> day of November, 2016, before the undersigned notary public in and for the said state, personally appeared Justin Hill, known or identified to me to be a Member/Manager of R & C, 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.



Kim E. Holindrake  
Notary Public for Utah

Exhibit "A"  
(Legal Description of Property)

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A PARCEL OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 8, TOWNSHIP 9 SOUTH, RANGE 2 EAST SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A FOUND BRASS CAP MARKING THE NORTHEAST CORNER OF SAID SECTION 8, THENCE S.00°28'39"E. ALONG THE SECTION LINE A DISTANCE OF 886.27 FEET; THENCE N.90°00'00"W. A DISTANCE OF 885.85 FEET TO THE REAL POINT OF BEGINNING.

THENCE S.00°12'15"W. A DISTANCE OF 797.67 FEET; THENCE S.00°30'56"W. A DISTANCE OF 132.13 FEET; THENCE S.00°43'55"E. A DISTANCE OF 30.68 FEET; THENCE S.04°14'10"E. A DISTANCE OF 66.97 FEET; THENCE S.03°30'31"E. A DISTANCE OF 46.02 FEET TO A POINT OF CURVATURE OF A 57.88-FOOT RADIUS TANGENT CURVE TO THE LEFT; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 30.25 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 29°56'52" AND A CHORD THAT BEARS S.19°20'38"E. A DISTANCE OF 29.91 FEET TO A POINT OF A CONTINUES CURVATURE OF A 27.77-FOOT RADIUS TANGENT CURVE TO THE LEFT; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 8.26 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 17°02'35" AND A CHORD THAT BEARS S.46°41'59"E. A DISTANCE OF 8.23 FEET; THENCE S.42°31'29"W. A DISTANCE OF 36.36 FEET; THENCE N.80°51'44"W A DISTANCE OF 14.17 FEET; THENCE N.84°01'45"W. A DISTANCE OF 113.15 FEET; THENCE S.00°21'26"E. A DISTANCE OF 5.12 FEET; THENCE S.89°43'23"W. A DISTANCE OF 368.04 FEET; THENCE N.00°18'54"W. A DISTANCE OF 197.81 FEET TO A POINT OF CURVATURE OF A 162.03-FOOT RADIUS TANGENT CURVE TO THE LEFT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 125.63 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 44°25'17" AND A CHORD THAT BEARS N.22°31'55"W. A DISTANCE OF 122.50 FEET; THENCE N.47°16'14"W. A DISTANCE OF 30.56 FEET TO A POINT OF CURVATURE OF A 15.00-FOOT RADIUS TANGENT CURVE TO THE RIGHT; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 23.56 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 89°58'58" AND A CHORD THAT BEARS N.02°39'51"W. A DISTANCE OF 21.21 FEET; THENCE N.47°39'51"W. A DISTANCE OF 124.36 FEET; THENCE N.00°07'53"E. A DISTANCE OF 40.11 FEET; THENCE N.42°29'37"E. A DISTANCE OF 311.70 FEET; THENCE N.42°28'40"E. A DISTANCE OF 103.62 FEET; THENCE N.42°29'21"E. A DISTANCE OF 58.08 FEET; THENCE N.47°19'03"E. A DISTANCE OF 234.39 FEET; THENCE N.50°10'59"E. A DISTANCE OF 221.75 FEET TO THE REAL POINT OF BEGINNING.

CONTAINING 485,820 sq.ft. OR 11.15 acres OF LAND MORE OR LESS.

Exhibit "B"  
(Adopting Resolution)

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**RESOLUTION: 09-07-2016D**

**RESOLUTION AUTHORIZING THE MAYOR, ON BEHALF OF PAYSON CITY, TO ENTER INTO A DEVELOPMENT AGREEMENT BETWEEN PAYSON CITY, A UTAH MUNICIPAL CORPORATION AND R & C, LLC, A UTAH LIMITED LIABILITY COMPANY FOR THE DEVELOPMENT OF STERLING GROVE SUBDIVISION LOCATED IN PAYSON CITY**

**WHEREAS**, R & C, LLC, a Utah limited liability company, being the “Owner/Developer” of certain property in Payson City known as “Sterling Grove Subdivision”, and as the Owner/Developer has requested the City to allow for the execution of the DEVELOPMENT AGREEMENT for the “Sterling Grove Subdivision”; and

**WHEREAS**, the Payson City desires to enter into the DEVELOPMENT AGREEMENT for the “Sterling Grove Subdivision” wherein is set forth terms and conditions of the development of the Sterling Grove Subdivision;

**NOW THEREFORE, BE IT RESOLVED BY THE PAYSON CITY COUNCIL**, that Mayor Richard D. Moore is authorized and directed to execute the attached DEVELOPMENT AGREEMENT for the “Sterling Grove Subdivision”, between Payson City, and R & C, LLC, Owner/Developer of the subject property.

(AGREEMENT ATTACHED HERETO AND INCORPORATED HEREIN)

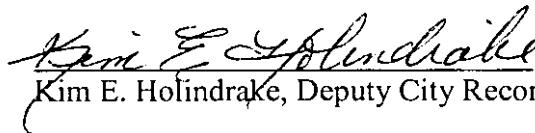
This Resolution shall take effect immediately upon its passage by the Payson City Council adopted in a public meeting.

RESOLUTION: 09-07-2016D passed by the Payson City Council this 7<sup>th</sup> day of September, 2016.



\_\_\_\_\_  
Mayor Richard D. Moore

Attest:

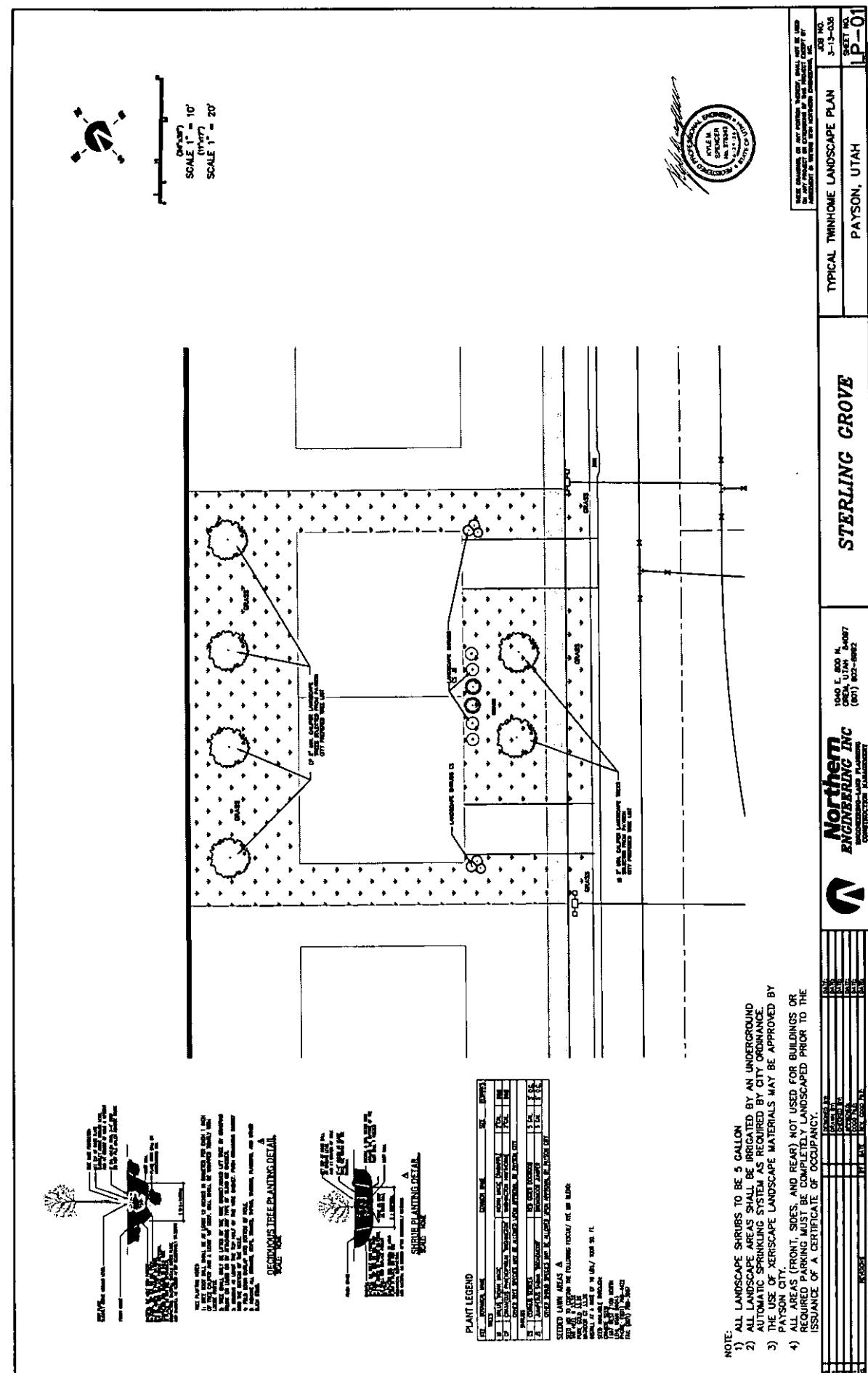


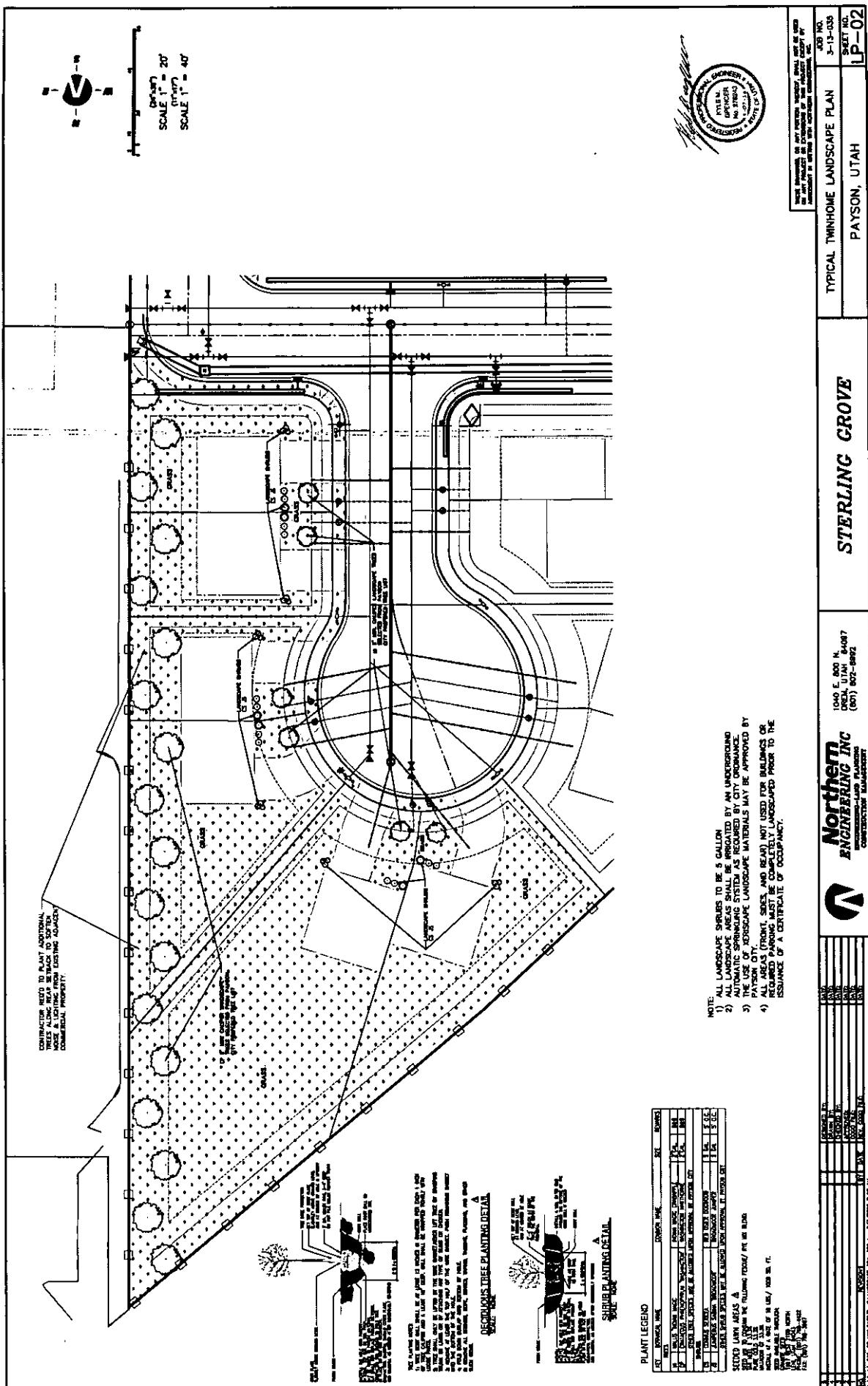
\_\_\_\_\_  
Kim E. Holindrake, Deputy City Recorder

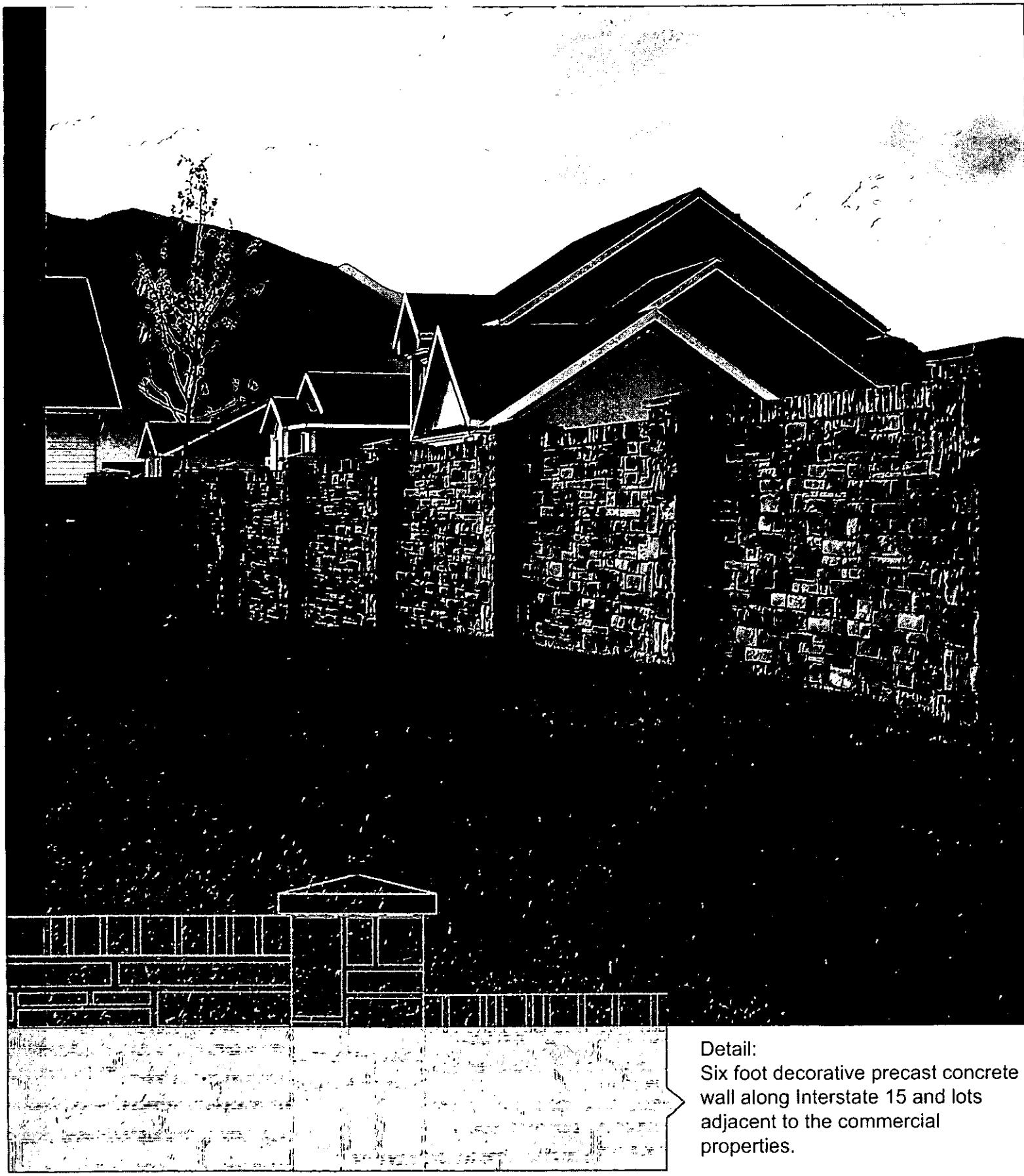


Exhibit "C"  
(Project Design and Landscaping)

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Detail:

Six foot decorative precast concrete wall along Interstate 15 and lots adjacent to the commercial properties.