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JEFFERY SMITH  
UTAH COUNTY RECORDER  
2019 Mar 05 4:45 PM FEE 65.00 BY DA  
RECEIVED FOR PAYSON CITY CORPORATION

## AMENDED DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered into this 5<sup>th</sup> day of March, 2019 by and among the City of Payson, a Utah municipal corporation, hereafter referred to as "City", Arrowhead Partners LLC, a Utah limited liability company, hereafter referred to as "Developer". The Developer is the owner of the property contained in the "Villages at Arrowhead Park Plat A, B and C" (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 located on or about 1500 N. Arrowhead Trail, Payson, Utah and encompasses Utah County Parcel Numbers 30:009:0063, 30:009:0064, and 30:009:0065, with the legal description being contained in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").

D. Parties acknowledge that the Project property 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 land uses, densities, and a mixture of residential neighborhoods within the planning area. The Project neighborhood consists of a use designation of "Residential Housing" and it is anticipated the neighborhood will be developed to accommodate single-family dwellings ("Residential Dwelling Unit").

E. Developer requested City Council action resulting in legislative approval of Residential Housing in a Planned Residential Development use as provided for in Section 20.10, Planned Residential Development 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 a single-family residential subdivision to be known as the Villages at Arrowhead Park Plats A, B and C, hereafter referred to as the "Project" as shown on the master plan for the entire Project to be developed on the Property ("Master Plan") attached hereto as Exhibit "F". 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, prepared in accordance with Utah Code Ann. §§ 10-9a-603, or any successor provision, and approved by the City, effectuating a subdivision of any portion of the Project 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." The Developer may complete the Project in one or more "Phases" (meaning an area of the Project as generally illustrated on the Master Plan intended for a certain number of Residential Dwellings; however, Section IV.A. below sets forth the vested rights with respect to density as set forth in the Specific Plan and Annexation Agreement) pursuant to one or more complete development applications to the City for development of a portion of the Project including a Final Plat, subdivision or any other permit, certificate or other authorization from the City required for development of the Project. The City's governing body has approved the Final Plat of Plats A, B and C of the Project pursuant to action on June 6, 2018.

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 Amended Agreement by Resolution No. 02-20-2019 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 Description of Property  
 Exhibit B – Adopting Resolution  
 Exhibit C – Approved Road Detail  
 Exhibit D – Project Amenities and Landscaping  
 Exhibit E – Residential Dwelling Design Elements  
 Exhibit F – Master Plan  
 Exhibit G – Foundation Drain System  
 Exhibit H – Building Setback & Easement Detail

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 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, planned to be dedicated to the City as a condition of approval of a development application ("Public Infrastructure"). Any modification from the approved Project drawings must be approved in writing by both Developer and City.

Section VI. B. (Specific Improvements) of the agreements addresses the sewer lift station and sewer forced main.

On June 6, 2018, the Payson City Council granted Final Plat approval contingent upon the satisfaction of certain conditions. The City Council also approved modified street cross-sections within the Project. See Exhibit C attached hereto for the Approved Road Details. 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.

It is the intent of the Parties to comply with Utah Code § 10-9a-604.5(4). This Section states, "When a municipality accepts an improvement completion assurance for landscaping or

infrastructure improvements for a development in accordance with Subsection (2)(c)(i), the municipality may not deny an applicant a building permit if the development meets the requirements for the issuance of a building permit under the building code and fire code." All other infrastructure, roadways, and amenities in the Project must be completed, inspected and approved prior to the issuance of any occupancy permits in the Project or any phase thereof.

Developer agrees to provide at least 2 points of ingress and egress for any phase of the Project that contains more than 10 residential units.

**B. Project Density and Lot Arrangement.** The Project was approved in accordance with Chapter 20.10 of the Payson City Subdivision Ordinance as a Planned Residential Development (PRD) in order to allow flexibility in the layout of the building lots. The approved Final Plat of Plats A, B and C of the Project allows for 50 single-family dwelling lots. Developer agrees to satisfy the minimum requirements of the Planned Residential Development together with the 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").

- i. Development of the Project shall be in accordance with the City's Vested Laws, the City's Future Laws (to the extent that these are applicable as otherwise specified in this Agreement), the Master Plan, the Zoning Map, and this Agreement.
- ii. The Parties acknowledge that the exact configuration of the final layout of the Project may vary from that shown in the Master Plan due to the final road locations, market forces, and other factors that are unforeseeable. Developer may transfer the location of the Residential Dwelling Units between and among the Phases so long as (a) no transfer shall allow the Project to exceed the Base Residential Dwelling Units plus approved density bonuses set forth in the Specific Plan and Annexation Agreement (as more fully described in Section IV.A. below), and (b) all lots for that Phase satisfies the requirements as specified in the Master Plan but does not exceed the allowed density as set forth in the vested rights set forth in the Specific Plan and Annexation Agreement (as more fully described in Section IV.A. below).

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.

**C. Relationship with Annexation Agreement.** The Developer understands and agrees that the Project property was included in the North Payson Specific Plan and Annexation Agreement, and subject to the provisions of the Specific Plan and Annexation Agreement approved through a legislative act of the City Council.

**D. Project Amenities 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 installation of landscaping as follows:
  - a. Improve the open space areas on "Arrow Park Drive" off of Arrowhead Trail (Plat A – Parcel C and Parcel D) to accentuate the Project entrance;
  - b. Improve and maintain the 13½ foot planter strip along Arrowhead Trail adjacent to lots 305 to and including 308, Lot 101, 121, 201, and 221 consistent with the landscaping design prepared by the City;
  - c. Ensure that all landscaped areas are improved and maintained by an underground automatic sprinkling system; and
  - d. 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 Plat A Parcel A and Parcel B, Plat A Parcel C and Parcel D (entry sign area), Plat B Parcel A, Plat C Parcel A, and the 13½ planter strip along Arrowhead Trail, consistent with the approved landscaping plan.
- e. The wetlands areas within the Project shall not require specific improvements, but shall remain in their natural vegetative state and without irrigation.
- Wetlands** are a critical part of our natural environment, and are regulated by the U.S. Army Corps of Engineers. A wetlands delineation report has been conducted in accordance with required guidelines set forth by the Corps.
- Wetlands are important features in the landscape that provide numerous beneficial services for people and wildlife. Some of these services, or functions, include protecting wildlife habitats, storing floodwaters, maintaining surface water flow during dry periods, and providing unique natural landscape, trails and recreation for the enjoyment of the community.
- The following guidelines are to be complied with:
1. There shall be no motorized vehicles in the wetlands area, with the exception of service vehicles as needed.
  2. There shall be no dumping of grass, debris, trash or conducting any activity that would be harmful to the environment.
  3. Delineated wetlands are to be kept in their natural state.
  4. This area is to be used not abused.
- ii. Developer shall complete the project fencing as follows:
- a. Install and maintain 6' decorative precast concrete (or equivalent) fencing along the frontage of Arrowhead Trail;
  - b. Ensure interior project fencing satisfies the following:
    1. Fences are not permitted in the front yard; front yard consists of the front property line parallel to street.
    2. All interior fencing will be 6' fencing for residential lots, installed and maintained by homeowners. All interior fencing must be approved by the homeowners association under the Project Declaration. Rear fencing on lots 303 and 304 will be 6' fencing together with all rear lots not adjoining Beer Creek or wetlands; and
    3. Materials including barbwire, field fence on posts, wood or chain link fence shall not be permitted in the Project.
  - c. Install 6' wrought iron fencing along the rear (north) property line along Beer Creek (Lots 212 through and including 221) and Lots 301 through and including 303, Lots 104 through and including 111 rear or side lot lines along the wetlands areas, prior to the issuance of an occupancy permit for said lots. No removal of fencing or installation of gates/access will be permitted in wrought iron fencing. (See **Exhibit "D"**). Such fencing shall be maintained by the homeowners association under the Project Declaration.
- iii. Developer shall provide pedestrian access from Arrow Park Drive west along Beer Creek to the west end of Plat D of the development. Future pedestrian access will be provided by the Developer and dedicated to the Payson City for continuation of the public non-motorized trail system.
- E. **Grading, Slope Stabilization, and Foundation Drainage Requirements.** 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. Developer and owners must adhere to the Foundation Drain System requirements as set forth in the letter dated June 21, 2018 and prepared by Earthtec Engineering and attached as Exhibit "G".

- F. **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.
- G. **Assurance for Completion of Improvements.** If and to the extent required by City's Vested Laws, Developer agrees to provide a performance guarantee for all infrastructure improvements that will be dedicated to Payson City, required landscaping and project amenities unless otherwise provided by Chapter 10-9a of the Utah Code as amended. The performance guarantee shall be equal to one hundred ten (110) percent of the approved engineer's cost estimate and in cash or in the form of an irrevocable letter of credit. The 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's Vested Laws. The Developer shall meet the current asphalt requirement of the City based on the Vested Laws, or increase the asphalt requirement from 4" to 5" for off-site improvements, and for on-site improvements, increase the asphalt requirement from 2.5" to 3.5", and for both on-site and off-site improvements provide a slurry coat once ninety percent (90%) of the Residential Units in the Project have been constructed.

It is the intent of the Parties to comply with Utah Code § 10-9a-604.5(4).

- H. **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 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 homeowners' maintenance fees and to enforce the requirements of the Project Declaration. At a minimum, the Homeowner's Association shall be responsible to maintain Parcel C and Parcel D, (entry signs area) and the improvements thereon; the subgrade storm water facility; and project fencing along the frontages of Arrowhead Trail and wrought iron fencing along rear property lines on Beer Creek and the wetland areas (Plat A Parcel A and Parcel B, Plat B Parcel A, and Plat C Parcel A).
  - ii. Include information about the acceptable building styles and standards for the Project, including acceptable architectural details, exterior materials, dwelling size, and other development standards and design guidelines deemed necessary and appropriate by the City and Developer.
  - iii. The Project Declaration shall be signed and recorded in the office of the Utah County Recorder and restrict the Project so the Project Declaration shall run with the land regardless of ownership.
- I. **Residential Dwelling Design Elements.** The Property is situated in an area designated as "Residential Housing" in the North Payson Annexation Specific Plan and Annexation Agreement. To further the land use goals of Payson City, the Developer acknowledges and agrees the Project will be improved to accommodate custom homes. To achieve this goal, the

City has imposed design criteria for the structures included in the Project. Illustrative representation of the allowable housing styles and appearances are attached hereto as **Exhibit "E", Residential Dwelling Design Elements.**

i. Dwelling sizes:

- a. A one-story dwelling shall not be less than 1,200 square feet above the finished lot grade, if the dwelling has a full basement. If a one-story dwelling does not have a basement, the dwelling shall not be less than 1,800 square feet above the finished lot grade.
- b. A two-story dwelling, without a basement, shall not have less than 1,400 square feet on the main floor, and not less than a total of 2,200 square feet of finished living area above the finished lot grade. If a two-story dwelling has a basement, the dwelling shall not be less than a total of 1800 square feet of finished living area above the finished lot grade.
- c. There shall be no split entry homes on the project (one story dwellings with steps from the garage to main floor living shall not be considered split entry homes).
- d. Each dwelling shall contain at least an attached two-car garage that measures no less than 20 feet by 20 feet. Side entry garages, recessed garage doors, garage doors with windows and decorative handles, and other creative solutions to avoid having the garage appear as the dominant architectural feature of the home will be stressed in the development. 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.
- e. The required square footage is exclusive of garage, porches, decks, etc.

ii. Exterior Requirements:

- a. In order to create well planned housing community, dwellings will be designed to have custom 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. Rooflines will include unique and significant articulation.
- b. Each dwelling shall be constructed using a mix of hard surface materials to include masonry products, stone, stucco and cementitious fiber board with the exception of roofing materials, eaves, doors, windows, and other similar architectural details. The use of metal soffit or fascia is allowed. Processed wood, aluminum, and vinyl exteriors are not permitted.
- c. All exterior walls (front, rear and all sides) shall include appealing architectural features such as multiple roofline pitches and gables; dormers, wall articulation including insets and pop-outs, and other aesthetic treatments such as porches, decks, chimneys, etc.
- d. Accessory buildings must be constructed using a similar architectural motif and materials as the primary dwelling. No metal buildings are allowed.
- e. Driveways shall be cement or brick pavers, or combination thereof.

iii. Lawn and Landscaping:

- a. In order to protect the storm drainage system, eliminate noxious weeds, and improve aesthetics, all front and visible side yard areas will need to be completely landscaped in accordance with the regulations of the Payson City Municipal Code

prior to the issuance of a Certificate of Occupancy. All rear yards are required to be landscaped within one year after the issuance of a Certificate of Occupancy.

- b. Front and visible side yard lawn areas must be provided with sod and not grown from seed or power mulching.
- c. A minimum of four (4) trees and a minimum of eight (8) two-gallon shrubs in the front and/or visible side yard within each Lot are required prior to occupancy. Conifers shall be a height of at least four (4) feet and deciduous trees shall be at least a one and one-half (1½) inch caliper, except on the parking strip, where deciduous trees shall be at least a two-inch caliper.
- d. All landscape and lawn areas, including those in the landscape planter strip, shall be maintained by an underground automatic sprinkler system.

J. **Storage.** Recreational vehicles, motorhomes, boats, trailers, and other similar apparatus shall be stored at an off-site location, within an enclosed structure, or located behind the front of the dwelling and screened from public view by a sight-obscuring fence.

K. **Setback Requirements.** The Parties have agreed to the following minimum setback requirements:

- 1. Front: 20 feet from back of sidewalk
- 2. Side (interior):
  - a. Two-car garage side – 10 feet
  - b. Three-car garage – 8 feet
  - c. Non-garage side – 8 feet
- 3. Side (corner): 15 feet from the back of sidewalk
  - a. No corner lot side garage, except for a side entry garage provided the driveway is located as far from the intersection as practicable. The corner side setback for a side entry garage is 20 feet.
- 4. Rear: 20 feet

#### 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 City accommodates and allows all development contemplated by this Agreement, including the development rights and uses described herein and depicted in the Master Plan. To the maximum extent permissible under the laws of Utah and the United States and at equity, the Parties intend that this Agreement grants 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 grant to Developer “vested rights” as that term is construed in Utah’s common law and pursuant to Utah Code Ann. § 10-9a-509. As of the date of this Agreement, City confirms that the uses, configurations, densities, and other development standards reflected in the Master Plan are approved under, and consistent with, City’s existing laws, Zoning Map, and General Plan, including, without limitation, the approved Final Plat of Plats A, B and C of the Project allowing for 50 single-family dwelling lots. Developer shall have the vested right to develop and construct the Project in accordance with the Specific Plan and Annexation Agreement, which allows for the development on the total project area of approximately 97 acres, a base density of 626 Residential Dwelling Units and with approved density bonuses a Maximum number of 835 Residential Dwelling Units (“**Maximum Residential Units**”) and the uses contemplated by the Master Plan and the Specific Plan and Annexation Agreement. At the completion of all of the development on the entire Project in accordance with the approved plans, Developer shall be entitled to the Base Range

density but may seek approval through legislative action by the city council to increase density based on the Maximum Residential Units allowed on the specific plan as specified and pursuant to this Agreement. Density bonuses outlined in City's Vested Laws, including, without limitation, Section 20.10 of the Payson City Municipal Code, and the Specific Plan and Annexation Agreement are allowed for additional specified amenities. This is 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, 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 the 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, choose to submit a development application for the entire Project under the City's Future Laws in effect at the time of the development application so long as 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 ten (10) years from its date of recordation in the official records of the Utah County Recorder's Office.

## **VI. Upsizing/Reimbursements to Developer**

**A. "Upsizing".** The City shall not require Developer to "upsized" any future Public Infrastructure (i.e., to construct the infrastructure to a size larger than required to service the Project) unless financial arrangements reasonably acceptable to the Parties are made to compensate Developer for the incremental or additive costs of such upsizing. For example, if an upsizing to a water pipe size increases costs by 10% but adds 50% more capacity, the City shall only be responsible to compensate Developer for the 10% cost increase. An acceptable financial arrangement for upsizing of improvements means reimbursement agreements, payback agreements, pioneering agreements, and reimbursements

### **B. Specific Improvements:**

i. Subject to reimbursement pursuant to the provisions of subsection VI.A. above, Developer shall upsize the main sewer line from 8" to 15" in sections beginning at the Project's

frontage on Arrowhead Trail Road to the sewage lift station. In future phases, the 15" sewer line will continue through the Project to 2200 West Road in Salem to the Salem City treatment facility on 2200 West. The City shall reimburse Developer for the upsizing referenced in this subsection in the total amount of [\$41,211.00] through Plats "A", "B", "C" and "D" upon completion of installation. In addition, City covenants to reimburse Developer in the future the cost difference of sewer pipe between an 8" sewer pipe and to 15" sewer pipe for the main line. Reimbursement amounts will be determined by the actual unit cost of the pipe when development occurs and the installation completed. In addition, in the event the City receives a development application which proposes to connect to the sewer line along Arrowhead Trail constructed by Developer, the City covenants to cause approval of such development application to be conditioned on the payment by the applicant to Developer of [\$50.41] per lineal frontage foot of the proposed development along Arrowhead Trail, in order to reimburse Developer's expenses for such sewer line and [\$69.99] per lineal frontage foot, in order to reimburse Developer's expenses for pressurized irrigation line.

ii. Subject to reimbursement pursuant to the provisions of subsection VI.A. above, Developer shall upsize the off-site water line for the Project from 10" to 12". City shall reimburse Developer for the upsizing referenced in this subsection in the total amount of [\$17,432.00]. In addition, in the event City receives a development application which proposes to connect to the water line for the Project constructed by Developer, the City covenants to cause approval of such development application to be conditioned on the payment by the applicant to Developer of [\$21.32] per lineal frontage foot of the proposed development along Arrowhead Trail, in order to reimburse Developer's expenses for such water line.

The current single source water system limits the development along Arrowhead Trail to a maximum of 400 Residential Dwelling Units. For additional development beyond the 400 Residential Dwelling Units an 18" pressurized irrigation line will be constructed along Arrowhead Trail. From North Blackhawk Street to 2200 West Road in Salem Utah.

iii. The private sewage lift station and forced sewage main for the Project shall be constructed by Developer without reimbursement from the City; provided, however, in the event City receives a development application which proposes to use the sewage lift station or forced sewage main constructed by Developer, the City covenants to cause approval of such development application to be conditioned on the reasonably proportionate contribution, by the applicant to Developer's expenses for such sewage lift station and forced sewage main, including the development proposed by DeVere Anderson Enterprises, containing an anticipated 964 residential dwelling units (which would be responsible for 60% of the total cost). The reimbursement from DeVere Anderson Enterprises or other future developer shall be as set forth in the DAE Annexation Agreement, including the 213.92 acres to be serviced by both water and sewer provided by Developer]. The Parties acknowledge and agree that Salem City has obtained final approval of a sewage treatment plant north of the Project; Salem City and Payson City have entered into an interlocal agreement to provide the Project and adjoining projects sewage treatment. The construction and operation of the Salem City sewage treatment plan shall be a condition precedent to the removal of the private sewage lift station and the City's assumption of maintenance of the Project's sewer lines.

## VII. 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

If to Developer: Arrowhead Partners, LLC  
 Terry C. Harward  
 704 N 1890 W #41A  
 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.

**D. 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.

**E. 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.

**F. 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.

**G. 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.

**H. Entire Agreement.** This Agreement, including exhibits, constitutes the entire Agreement between the parties.

**I. 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. Further, the improvements contemplated in Section VI above are required for and benefit the larger Planned Residential Development. As such, the Parties agree to, in good faith, apply for, grant, and approve such amendments to this Agreement or additional development agreement(s) as may be necessary or reasonably required for future Phases of the larger Planned Residential Development, consistent with this Agreement and with the approval granted by the Payson City Council and in accordance with the Vested Laws.

**J. 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.

**K. 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.

L. **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.

M. **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.

N. **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.

O. **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.

P. **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.

Q. **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*  
Kim E. Holindrake,  
Payson City Deputy Recorder

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

APPROVED AS TO FORM:

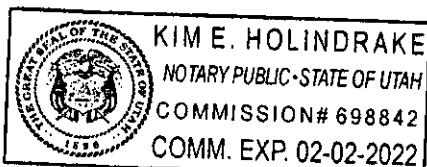
By: *Mark A. Sorenson*  
Mark A. Sorenson,  
Payson City Attorney



STATE OF UTAH )  
: ss.  
County of UTAH )

On this 5<sup>th</sup> day of March, 2019, 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 City 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

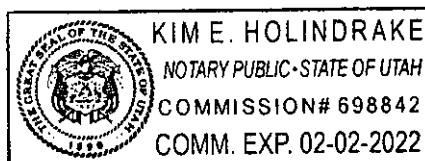
ARROWHEAD PARTNERS, LLC,  
a Utah limited liability company

By: Terry C. HarvardPrinted Name: Terry C. HarvardTitle: Manager

STATE OF UTAH )  
: ss.  
County of Utah )

On this 5<sup>th</sup> day of March, 2019, before the undersigned notary public in and for the said state, personally appeared Terry C. Harvard, 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.



Kim E. Holindrake  
Notary Public for Utah

Exhibit "A"  
(Legal Description of Property)

**PLAT A, VILLAGES AT ARROWHEAD PARK**

A PORTION OF THE NORTHWEST 1/4 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 1695.06 FEET AND EAST 100.87 FEET FROM THE NORTHWEST CORNER OF SECTION 3, TOWNSHIP 9 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE N20°46'33"E 21.98 FEET; THENCE ALONG THE ARC OF A 283.50 FOOT RADIUS CURVE TO THE RIGHT 107.44 FEET THROUGH A CENTRAL ANGLE OF 21°42'47" (CHORD: N31°37'56"E 106.79 FEET); THENCE ALONG THE ARC OF A 15.00 FOOT RADIUS CURVE TO THE LEFT 20.84 FEET THROUGH A CENTRAL ANGLE OF 79°35'15" (CHORD: N2°41'42"E 19.20 FEET); THENCE N52°54'05"E 61.00 FEET; THENCE ALONG THE ARC OF A 245.00 FOOT RADIUS NON-TANGENT CURVE (RADIUS BEARS: N52°54'05"E) TO THE LEFT 39.44 FEET THROUGH A CENTRAL ANGLE OF 9°13'23" (CHORD: S41°42'37"E 39.40 FEET); THENCE S46°19'18"E 107.90 FEET; THENCE ALONG THE ARC OF A 10.00 FOOT RADIUS CURVE TO THE LEFT 15.71 FEET THROUGH A CENTRAL ANGLE OF 89°59'56" (CHORD: N88°40'40"E 14.14 FEET); THENCE N43°40'42"E 74.46 FEET; THENCE S53°56'54"E 66.59 FEET; THENCE S46°19'18"E 95.00 FEET; THENCE N43°40'42"E 37.50 FEET; THENCE S46°19'18"E 70.99 FEET; THENCE S30°05'22"E 57.25 FEET; THENCE S22°02'25"E 299.11 FEET; THENCE S42°29'10"E 73.52 FEET; THENCE S46°19'18"E 273.66 FEET; THENCE S43°19'00"W 242.08 FEET; THENCE N46°19'18"W 115.37 FEET; THENCE S43°40'42"W 15.00 FEET; THENCE N46°19'18"W 216.44 FEET; THENCE S45°57'19"W 38.63 FEET; THENCE S71°59'00"W 37.00 FEET; THENCE N18°01'00"W 95.05 FEET; THENCE N34°34'21"W 89.13 FEET; THENCE N57°46'42"E 25.90 FEET; THENCE ALONG THE ARC OF A 45.00 FOOT RADIUS CURVE TO THE RIGHT 11.31 FEET THROUGH A CENTRAL ANGLE OF 14°23'48" (CHORD: N64°58'36"E 11.28 FEET); THENCE N25°29'44"W 51.77 FEET; THENCE S57°46'42"W 37.87 FEET; THENCE N19°54'33"W 93.97 FEET; THENCE N27°57'54"W 78.97 FEET; THENCE N49°21'52"W 244.95 FEET; THENCE N20°46'33"E 30.73 FEET; THENCE ALONG THE ARC OF A 45.00 FOOT RADIUS CURVE TO THE RIGHT 6.45 FEET THROUGH A CENTRAL ANGLE OF 8°13'02" (CHORD: N24°53'04"E 6.45 FEET); THENCE N73°55'35"W 50.63 FEET TO THE POINT OF BEGINNING.

CONTAINS: ±6.85 ACRES

**PLAT B, VILLAGES AT ARROWHEAD PARK**

A PORTION OF THE NORTHWEST 1/4 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 1577.36 FEET AND EAST 385.04 FEET FROM THE NORTHWEST CORNER OF SECTION 3, TOWNSHIP 9 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE N43°40'42"E 172.86 FEET; THENCE ALONG THE ARC OF A 10.00 FOOT RADIUS CURVE TO THE LEFT 15.71 FEET THROUGH A CENTRAL ANGLE OF 90°00'00" (CHORD: N1°19'18"W 14.14 FEET); THENCE N43°40'42"E 45.00 FEET; THENCE S46°19'18"E 15.00 FEET; THENCE N43°40'42"E 152.49 FEET; THENCE S44°28'35"E 205.77 FEET; THENCE S29°41'07"E 116.35 FEET; THENCE S19°44'03"E 273.23 FEET; THENCE S36°09'33"E 72.98 FEET; THENCE S45°06'40"E 77.14 FEET; THENCE S56°50'32"E 180.55 FEET; THENCE S46°41'00"E 11.55 FEET; THENCE S43°19'00"W 334.25 FEET; THENCE N46°19'18"W 273.66 FEET; THENCE N42°29'10"W 73.52 FEET; THENCE N22°02'25"W 299.11 FEET; THENCE N30°05'22"W 57.25 FEET; THENCE N46°19'18"W 70.99 FEET; THENCE S43°40'42"W 37.50 FEET; THENCE N46°19'18"W 95.00 FEET; THENCE N53°56'54"W 66.59 FEET TO THE POINT OF BEGINNING.

CONTAINS: ±6.79 ACRES

**PLAT C, VILLAGES AT ARROWHEAD PARK**

A PORTION OF THE NORTHWEST 1/4 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 2656.47 FEET AND EAST 363.38 FEET FROM THE NORTHWEST CORNER OF SECTION 3, TOWNSHIP 9 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE N7°15'53"E 193.68 FEET; THENCE N32°17'28"E 192.24 FEET; THENCE N10°09'56"W 32.11 FEET; THENCE N71°59'00"E 37.00 FEET; THENCE N45°57'19"E 38.63 FEET; THENCE S46°19'18"E 216.44 FEET; THENCE N43°40'42"E 15.00 FEET; THENCE S46°19'18"E 115.37 FEET; THENCE S43°19'00"W 282.35 FEET; THENCE S89°48'18"W 241.11 FEET TO THE POINT OF BEGINNING.

CONTAINS: ±2.56 ACRES

Exhibit "B"  
(Adopting Resolution)

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**RESOLUTION NO. 02-20-2019 *B***

**RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AMENDED DEVELOPMENT AGREEMENT ON BEHALF OF PAYSON CITY BETWEEN PAYSON CITY, A MUNICIPAL CORPORATION AND THE DEVELOPER OF THE VILLAGES AT ARROWHEAD PARK SUBDIVISION**

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 Amended Development 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, and development regulations in order to receive the benefit of vesting for certain uses and zoning designations under the terms of this Amended Development Agreement as more fully set forth herein.; and

WHEREAS, Parties acknowledge that the Project property is still within the East Side Comprehensive Plan Area and subject to the terms and conditions of the North Payson Annexation Specific Plan and Annexation Agreement; and

WHEREAS, Developer has prepared and presented to the City land use applications for a single-family residential subdivision to be known as the Villages at Arrowhead Park Subdivision; 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 Amended Development Agreement for the Villages at Arrowhead Park Subdivision 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 Amended Development Agreement for the Villages at Arrowhead Park Subdivision in Payson City.

(See Attached Amended Development Agreement)

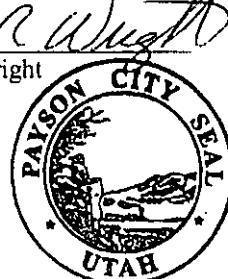
This Resolution shall take effect immediately upon its passage by the Payson City Council adopted in a public meeting.

RESOLUTION NO. 02-20-2019    passed by the Payson City Council and executed this 20<sup>th</sup> day of February, 2019.

Attest:

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

*William R. Wright*  
Mayor William R. Wright



**Exhibit "C"**  
**(Approved Road Detail)**

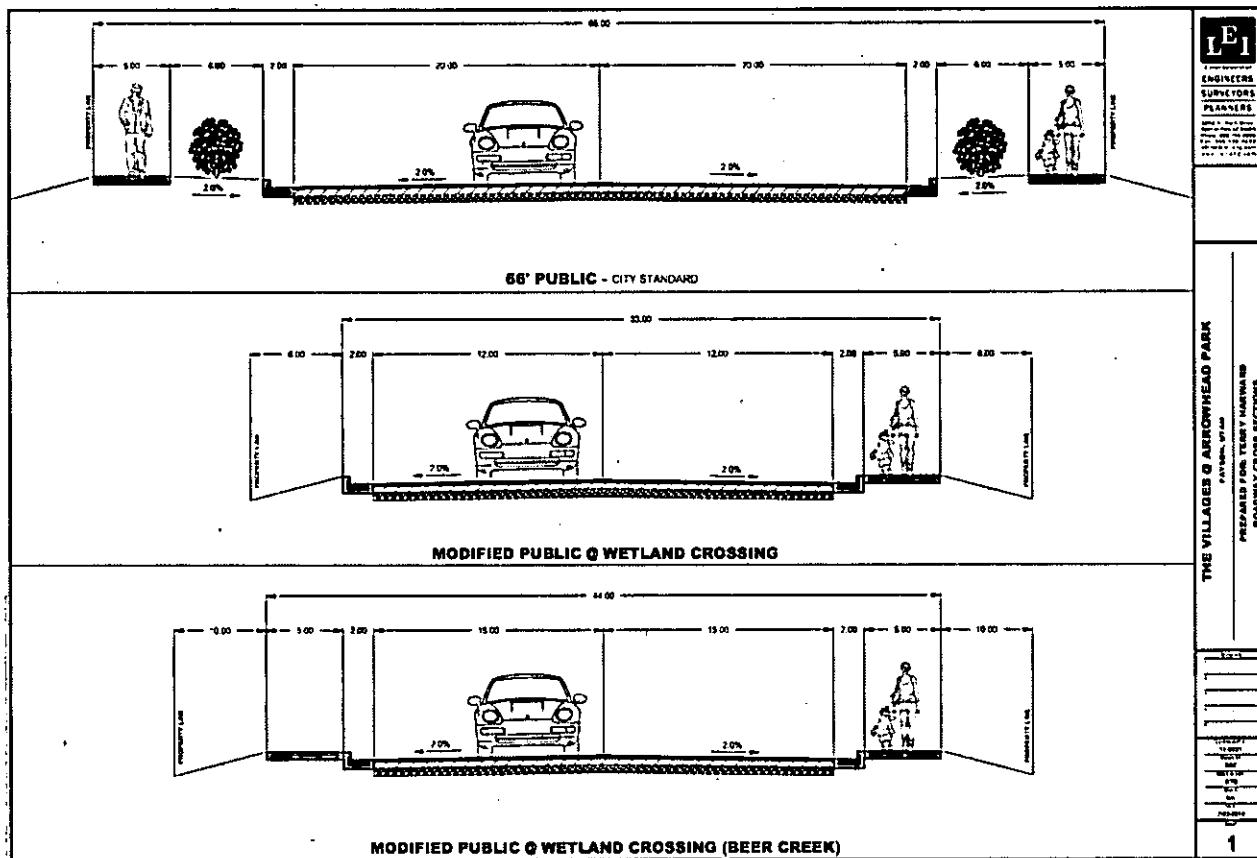
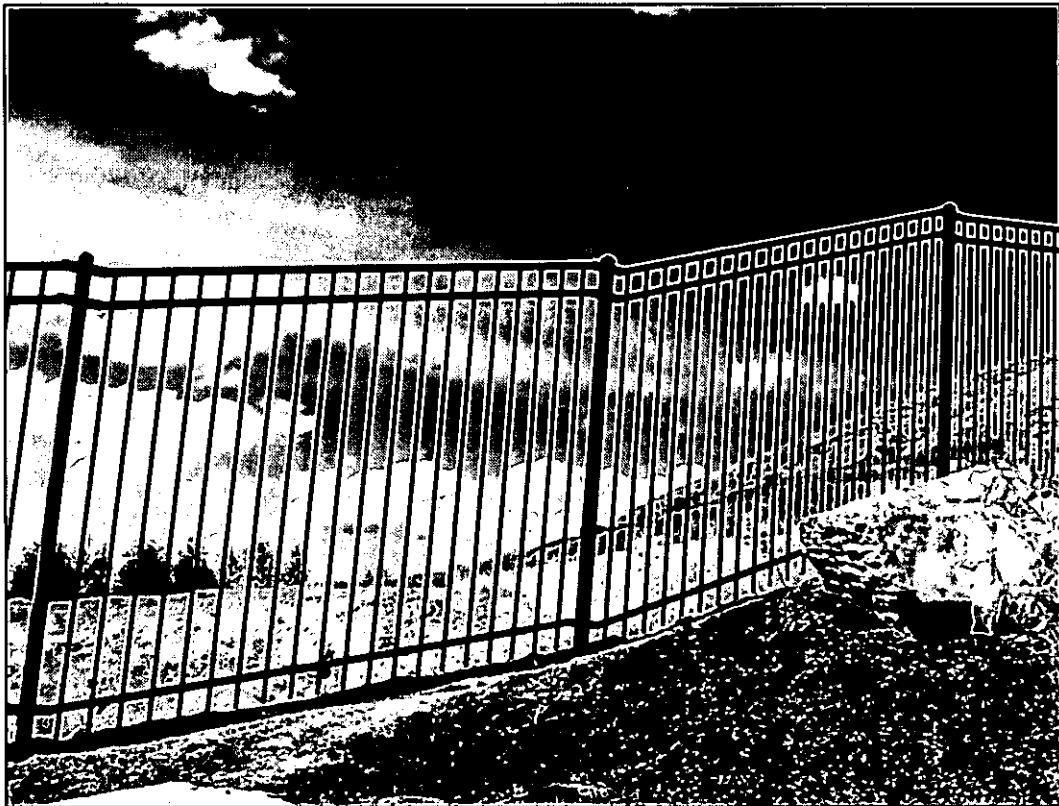


Exhibit "D"  
(Project Amenities and Landscaping)



Wrought Iron Fencing along Beer Creek Plat B Rear of Lots 212-221

Wrought Iron Fencing along Wetlands Plat A Rear of Lots 104-111

Wrought Iron Fencing along Wetlands Plat C



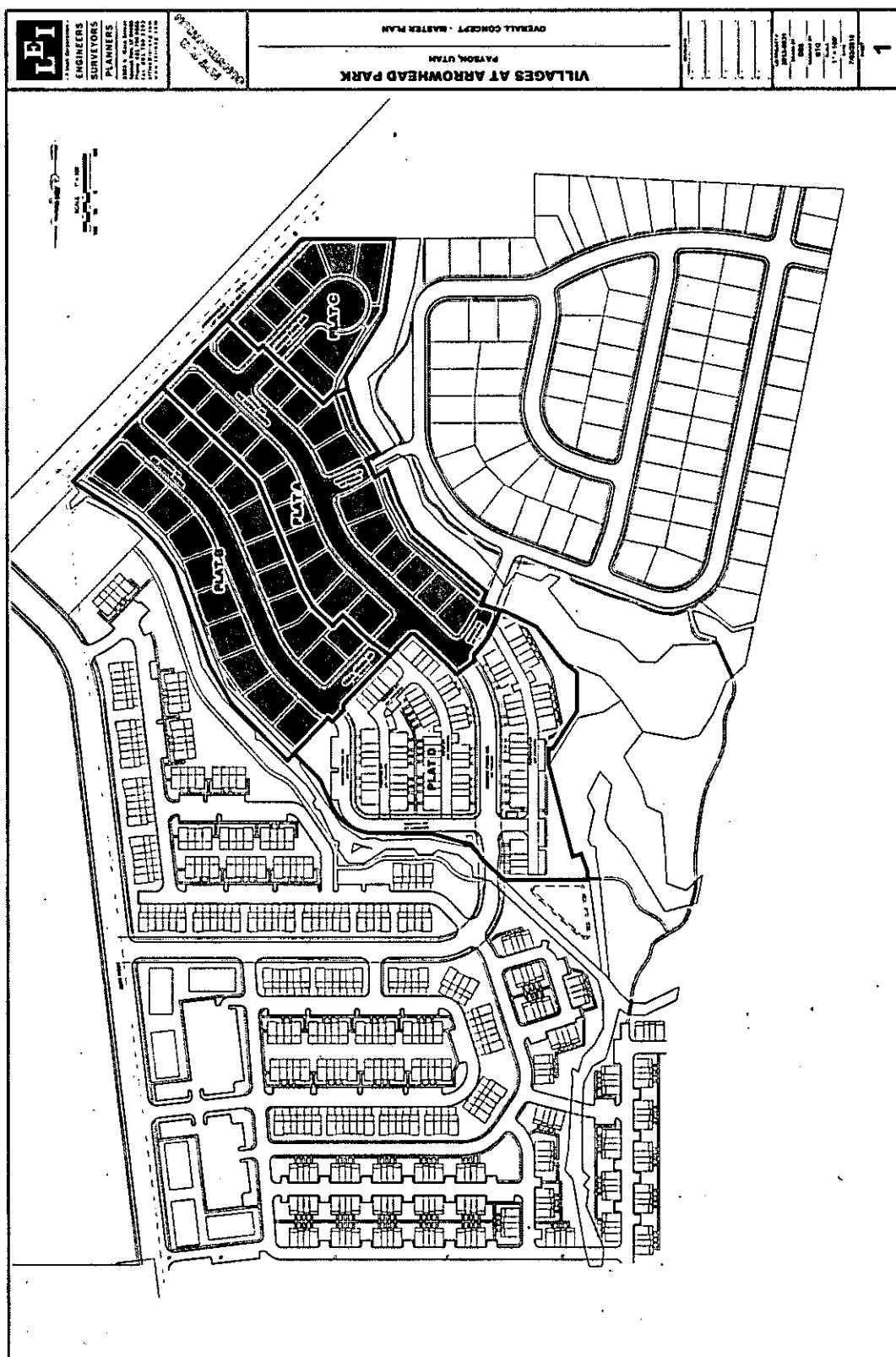
Rear Lots 301-302 and Side Yard of Lot 303

Typical 6' Decorative Precast Concrete Wall along Arrowhead Trail

Exhibit "E"  
(Residential Dwelling Design Elements)

Exhibit "E"  
(Residential Dwelling Design Elements)



Exhibit "F"  
(Master Plan)

**Exhibit "G"**  
**(Foundation Drain System)**



**Exhibit "G"**  
**"Road Cross Section"**

1497 West 40 South <b>Lindon, Utah - 84042</b> Phone (801) 225-5711	3662 West 2100 South <b>Salt Lake City, Utah - 84120</b> Phone (801) 787-9138	1596 W. 2650 S. #108 <b>Ogden, Utah - 84401</b> Phone (801) 399-9516
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June 21, 2018

**Harward Real Estate**  
 Attention: Mr. Terry Harward  
 704 North 1890 West  
 Provo, UT 84601

**Re: Perimeter Foundation Drain Recommendations-Revised**  
**Villages at Arrowhead Park**  
**2200 West Arrowhead Trail**  
**Payson, Utah**  
**Job No: 179376**

**Gentlemen:**

As you requested, this letter summarizes the perimeter foundation drain system requirements at the Villages at Arrowhead Park Subdivision located in Payson, Utah. Earthtec Engineering has previously conducted a geotechnical study<sup>1</sup> for the subdivision.

As also stated in the referenced geotechnical study, Section R405.1 of the 2015 International Residential Code states, "Drains shall be provided around all concrete and masonry foundations that retain earth and enclose habitable or usable spaces located below grade." Section R310.2.3.2 of the 2015 International Residential Code states, "Window wells shall be designed for proper drainage by connecting to the building's foundation drainage system when required by Section R405.1 or an approved alternative method." An exception is allowed when the foundation is installed on well drained ground consisting of Group 1 soils, which include those defined by the Unified Soil Classification System as GW, GP, SW, SP, GM, and SM. The soils observed in the explorations at the depth of foundation consisted primarily of lean clay (CL) and silt (ML) which are not Group 1 soils. The recommendations presented below should be followed during design and construction of the foundation drains:

- A perforated 4-inch minimum diameter pipe should be enveloped in at least 12 inches of free-draining gravel and placed adjacent to the perimeter footings. The perforations should be oriented such that they are not located on the bottom side of the pipe, as much as possible. The free-draining gravel should consist of primarily  $\frac{1}{4}$ - to 2-inch size gravel having less than 5 percent passing the No. 4 sieve, and should be wrapped with a separation fabric such as Mirafi 140N or equivalent.
- The highest point of the perforated pipe bottom should be equal to the bottom elevation of the footings. The pipe should be uniformly graded to drain to an appropriate outlet (storm drain, land drain, other gravity outlet, etc.) or to one or more sumps where water can be removed by pumping.
- A perforated 4-inch minimum diameter pipe should be installed in all window wells and connected to the foundation drain.

<sup>1</sup> Geotechnical Study, Villages at Arrowhead Park, 2200 West Arrowhead Trail, Payson, Utah, Earthtec Engineering, Project No. 179376, December 19, 2017.



[Attached]

Perimeter Foundation Drain Recommendations-Revised  
 Villages at Arrowhead Park  
 2200 West Arrowhead Trail  
 Payson, Utah  
 Job No: 179376

Page 2

- To facilitate drainage beneath basement floor slabs we recommend that the minimum thickness of free-draining fill beneath the slabs be increased to at least 10 inches (approximately equal to the bottom of footing elevations). A separation fabric such as Mirafi 140N or equivalent should be placed beneath the free-draining gravel. Connections should be made to allow any water beneath the slabs to reach the perimeter foundation drain.
- The drain system should be periodically inspected and clean-outs should be installed for the foundation drain to allow occasional cleaning/purging, as needed. Proper drain operation depends on proper construction and maintenance.
- Water collected at the sumps should be removed by either gravity or by pumps to an appropriate outlet as far from the structure as possible a minimum 10 feet and down gradient.

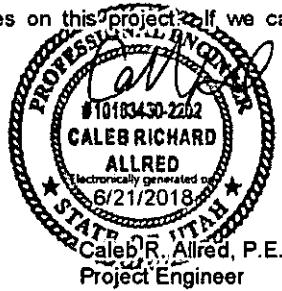
The information presented in this letter applies only to the perimeter foundation drain system at the subject development. Site grading activities are outside of the scope of our work and are not addressed in this letter. The observations and recommendations presented in this letter were conducted within the limits prescribed by our client. No warranty or representation is intended in our proposals, contracts, reports, and letters.

We appreciate the opportunity of providing our services on this project. If we can answer questions or be of further service, please call.

Respectfully:  
**EARTHTEC ENGINEERING**



Timothy A. Mitchell, P.E.  
 Senior Geotechnical Engineer



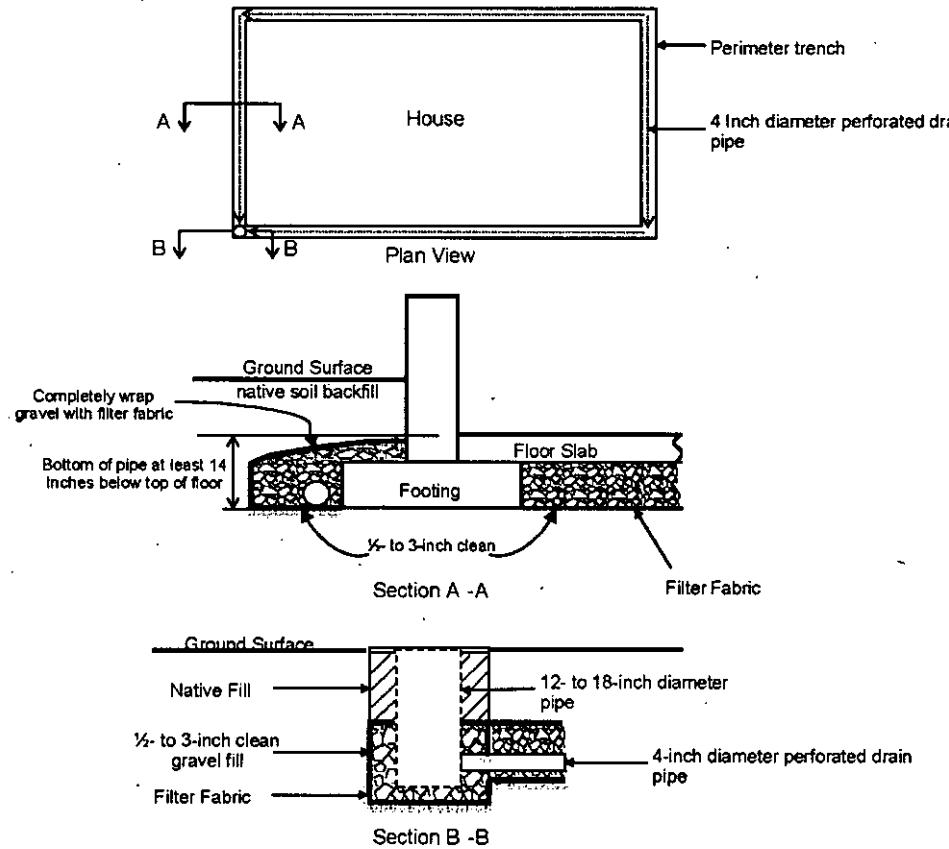
TM/ca

Attachments: Figure No. 1 *Perimeter Foundation Drain System*



Professional Engineering Services ~ Geotechnical Engineering ~ Geologic Studies ~ Code Inspections ~ Special Inspection / Testing ~ Non-Destructive Examination ~ Failure Analysis

**PERIMETER FOUNDATION DRAIN SYSTEM**  
**Villages at Arrowhead Park**  
**Payson, Utah**



Note: A sump is not required if the collected water can be conveyed to a point where it can freely drain; such as a landscaped area, storm drain, or other gravity outlet, and as long as water cannot back up into the drain system.

PROJECT NO.: 179376



FIGURE NO.: 1

Exhibit "H"  
(Building Setback & Easement Detail)

