

WHEN RECORDED, MAIL TO:

Payson City
City Recorder
439 W Utah Avenue
Payson UT 84651



ENT 54055:2021 PG 1 of 10
ANDREA ALLEN
UTAH COUNTY RECORDER
2021 Mar 23 10:50 am FEE 0.00 BY JR
RECORDED FOR PAYSON CITY CORPORATION

**FIRST AMENDMENT TO
AMENDED DEVELOPMENT AGREEMENT**

THIS FIRST AMENDMENT TO AMENDED DEVELOPMENT AGREEMENT

(“**Amendment**”), dated March 17, 2021, is made and entered into by and between the City of Payson, a Utah municipal corporation (“**City**”), and Arrowhead Partners, LLC, a Utah limited liability company (“**Developer**”). Capitalized terms not defined herein shall have the meanings given them in the Agreement (as defined below).

RECITALS

- A. The Parties entered into that certain Amended Development Agreement, dated March 5, 2019, and recorded in the Utah County Recorder’s Office on March 5, 2019, as Entry No. 18231:2019 (as such agreement is amended, restated, supplemented, or otherwise modified from time to time, the “**Agreement**”), which Agreement relates to the development of certain real property described on the attached Exhibit A (the “**Property**”).
- B. As required by the City, and as set forth in the Agreement, Developer has been required to install certain offsite infrastructure improvements, including without limitation sanitary sewer, water, and pressurized irrigation infrastructure improvements, to accommodate the development of the Property.
- C. The City required that such infrastructure improvements be located and sized to accommodate the development of real property located near the Property, in addition to accommodating the development of the Property itself.
- D. The Parties now desire to amend the Agreement to modify restrictions on the development of the Property that have been imposed upon Developer due to the lack of adequate infrastructure servicing the Property at the time such restrictions were imposed and to correctly state the costs of certain offsite improvements incurred by Developer for which other property owners will have a reimbursement obligation upon the connection to such improvements.

AMENDMENT

NOW, THEREFORE, for good and valuable consideration, receipt and sufficiency of which are duly acknowledged by the Parties, the Parties agree that the Agreement is modified as follows:

1. Modification of Residential Dwelling Unit Restrictions and Pressurized Irrigation Line Requirements.

- (a) The Parties acknowledge that the Property is part of a larger area of real property that was annexed into the City pursuant to that certain North Payson Annexation Specific Plan and Annexation Agreement, dated November 25, 2002, and recorded in the Utah County Recorder's Office on February 28, 2003, as Entry No. 29430:2003 (as amended to date, the "***Annexation Agreement***"). At the time the Annexation Agreement was executed by the parties thereto, the annexation area covered thereby was not serviced by adequate utility infrastructure. In order to prevent development of the annexed area beyond the capacity of the existing utility infrastructure, the Annexation Agreement included a restriction of a maximum of 200 new residential units being developed in the annexed area in any single calendar year (the "***200 Unit Limitation***"). As of the date of this Agreement, Developer, the City, and third parties have constructed and extended utility infrastructure to the annexed area, including without limitation a new sewage treatment facility located in Salem, Utah, which is able to service the Property via gravity-flow sanitary sewer lines. As the result of such utility infrastructure improvements, the City acknowledges that the 200 Unit Limitation is no longer necessary and the 400 Unit Limitation (as defined below) is adequate to prevent the development of the Property from exceeding existing utility infrastructure capacity. Accordingly, the Parties agree that neither the Property nor Developer shall be constrained by or subject to the 200 Unit Limitation, and the City shall not refuse to issue building permits, certificates of occupancy, or other permits or approvals applicable to the construction and use of residential units based on the 200 Unit Limitation.
- (b) The Parties further acknowledge that, as of the date of this Amendment, the Property is being serviced by a single-source culinary water line. As set forth in Section VI.B.ii of the Agreement, development of the real property along Arrowhead Trail, including the Property, is limited to 400 Residential Dwelling Units (the "***400 Unit Limitation***") until an 18-inch pressurized irrigation line is constructed along Arrowhead Trail from North Blackhawk Street to 2200 West Road in Salem, Utah (the "***PI Line***"). As of the date of this Amendment, the PI line has been installed along that portion of Arrowhead Trail that is fronted by the Property. Additionally, the City has completed a portion of the PI Line as a 16-inch line. Accordingly, the Parties hereby agree that Section VI.B.ii of the Agreement is hereby modified to require the construction of a 16-inch pressurized irrigation line servicing the Property rather than an 18-inch pressurized irrigation line.

The Parties anticipate that the remainder of the PI Line will be constructed upon the development of real property that fronts Arrowhead Trail located to the south of the Property. To accommodate different circumstances under which the remainder of the PI Line may be completed, the Parties hereby agree that the 400 Unit Limitation shall be effective only until the completion

of the construction of the remainder of the PI Line by Developer or a third party. Once the remainder of the PI Line is completed, the 400 Unit Limitation shall be terminated and shall thereafter have no further force or effect.

2. Amounts Subject to Reimbursement.

- (a) As contemplated by Section VI.B.ii of the Agreement, Developer has constructed a 12-inch offsite water line within Arrowhead Trail (the "**Water Line**") to service the Property and other real property located along Arrowhead Trail near the Property. The per-lineal-foot cost of the Water Line incurred by Developer, including a required pressure reducing valve, was \$57.10. Accordingly, without limiting any right of Developer to receive reimbursement for (or the obligation of any third party to reimburse Developer for) the cost of any other utility infrastructure installed by Developer, if the City receives any development application after November 1, 2019 but before November 1, 2029 that proposes to connect to the Water Line, the City covenants to cause approval of such development application to be conditioned upon the payment by the applicant to Developer of the applicable Reimbursement Amount (as defined below), determined as set forth below, which payment shall be in partial reimbursement of Developer's cost to construct the Water Line.
- (b) The parcels of real property fronting Arrowhead Trail to which the foregoing reimbursement obligations (and the other reimbursement obligations set forth in the Agreement) shall apply are described on the attached Exhibit B (the "**Reimbursement Parcels**"). The Reimbursement Parcels do not include an approximately 315-acre parcel of real property identified as Tax Parcel No. 30:010:0055 (the "**Excluded Parcel**"), which parcel has substantial frontage on one side of Arrowhead Trail in the location of the Water Line, due to an arrangement between the owner of the Excluded Parcel and the City pursuant to which the Excluded Parcel will obtain, upon the development of the Excluded Parcel, culinary water service from a source other than the Water Line.
- (c) Except for the portion of Arrowhead Trail fronted by the Reimbursement Parcel identified as Tax Parcel No. 30:009:0075 (such parcel, as the boundary between such parcel and the Excluded Parcel may be modified from time to time, the "**Smith Parcel**"), the Reimbursement Parcels front only one side of Arrowhead Trail. The portion of Arrowhead Trail that is fronted by the Smith Parcel is fronted on both sides by Reimbursement Parcels and is referred to herein as the "**Half Reimbursement Rate Portion**," and the remaining portion of Arrowhead Trail, which is fronted on only one side by Reimbursement Parcels, is referred to herein as the "**Full Reimbursement Rate Portion**." The "**Reimbursement Amount**" for each Reimbursement Parcel or portion thereof that is the subject of any development application shall be equal to the sum of (i) \$28.55 per lineal frontage foot of such Reimbursement Parcel (or

applicable portion thereof) along the Half Reimbursement Rate Portion and (ii) \$57.10 per lineal frontage foot of such Reimbursement Parcel (or applicable portion thereof) along the Full Reimbursement Rate Portion.

- (d) The City agrees to allow the owner of the Smith Parcel (or any subdivided portion thereof) to connect to the Water Line for purposes of providing culinary water to such property upon meeting the same conditions and paying such connection fees to the City as are then applicable to the other Reimbursement Parcels for connection to the Water Line; provided that the City shall not be required under this paragraph to allow such connection to the Water Line to service more than 4.481 acres of real property, which is the area of the Smith Parcel as set forth in the current vesting deed of the Smith Parcel, including all wetlands located on such parcel.
 - (e) In order to provide notice to third parties of the reimbursement obligations applicable to the Reimbursement Parcels as set forth above, the City agrees to execute and record, with respect to each Reimbursement Parcel, a Notice of Reimbursement Obligations in the form attached hereto as Exhibit C within ten (10) days after the mutual execution of this Amendment.
3. Ratification; Control of Conflicting Provisions. The Agreement, as modified by this Amendment, is and shall remain in full force and effect and is hereby ratified by the Parties. To the extent that there is any conflict between the provisions of the Agreement and the provisions set forth in this Amendment, the provisions set forth in this Amendment shall control and supersede such conflicting terms in the Agreement. Except as expressly stated otherwise, the term "Agreement" shall refer to the Agreement as modified by this Amendment. All other provisions of the Agreement shall remain and are hereby affirmed.
 4. Counterparts. This Amendment may be executed in separate counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail or electronic signature (including .pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com), or any other transmission method, and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

[Remainder of page intentionally left blank. Signature page follows immediately.]

IN WITNESS WHEREOF, the Parties have executed this First Amendment to Amended Development Agreement to be effective as of the date first written above.

CITY:

ATTEST:

PAYSON CITY
A Utah Municipal Corporation

Kim E. Holindrake
Kim E. Holindrake, City Recorder

By: William R. Wright
William R. Wright, Mayor

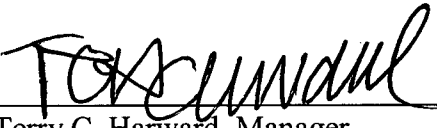
APPROVED AS TO FORM:

Jason Sant
Jason Sant, City Attorney



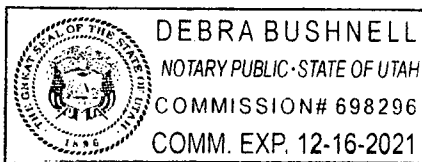
DEVELOPER:

ARROWHEAD PARTNERS, LLC,
A Utah Limited Liability Company

By: 
Terry C. Harward, Manager

STATE OF UTAH)
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COUNTY OF UTAH)

On March 18, 2021, before me, a notary public in and for the State of Utah, personally appeared Terry C. Harward, a Manager of Arrowhead Partners, LLC, a Utah limited liability company, and signer of the foregoing instrument, who duly acknowledged to me that he executed the same in such capacity on behalf of such limited liability company.





Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B**LEGAL DESCRIPTIONS OF REIMBURSEMENT PARCELS****Tax Parcel No. 30:009:0037:**

COM N 419.92 FT & W 1627.78 FT FR SE COR. SEC. 3, T9S, R2E, SLB&M.; N 0 DEG 46' 35" E 1421.58 FT; W 728.98 FT; S 88 DEG 58' 46" W 181.62 FT; S 88 DEG 55' 53" W 1177.89 FT; S 89 DEG 0' 15" W 1794.45 FT; S 43 DEG 18' 25" W 47.57 FT; N 89 DEG 0' 28" E 1827.5 FT; S 1 DEG 21' 3" E 493.07 FT; S 2 DEG 15' 23" W 856.37 FT; S 89 DEG 37' 53" E 2090.71 FT TO BEG. AREA 68.564 AC.

Tax Parcel No. 30:009:0071:

COM N 2.96 FT & E 701.56 FT FR W 1/4 COR. SEC. 3, T9S, R2E, SLB&M.; N 89 DEG 49' 31" E 764.53 FT; N 89 DEG 52' 3" E 669.67 FT; N 89 DEG 29' 8" E 303.02 FT; N 88 DEG 48' 5" E 547.41 FT; N 88 DEG 50' 14" E 786.17 FT; S 0 DEG 46' 35" W 840.03 FT; S 88 DEG 58' 46" W 912.07 FT; S 88 DEG 55' 53" W 1177.89 FT; S 89 DEG 0' 15" W 1794.45 FT; N 43 DEG 17' 32" E 1202.63 FT TO BEG. AREA 67.484 AC.

Tax Parcel No. 30:009:0074:

COM N 1289.06 FT & W 3684.72 FT FR SE COR. SEC. 3, T9S, R2E, SLB&M.; N 1 DEG 21' 3" W 493.07 FT; S 89 DEG 0' 28" W 1827.5 FT; S 43 DEG 18' 25" W 700.02 FT; N 88 DEG 48' 41" E 2319.5 FT TO BEG. AREA 23.623 AC.

Tax Parcel No. 30:009:0075:

COM AT W 1/4 COR. SEC. 3, T9S, R2E, SLB&M.; S 0 DEG 29' 25" E 642.72 FT ALONG SEC. LINE; N 43 DEG 13' 16" E 618.67 FT; N 39 DEG 3' 28" E 71.2 FT; N 43 DEG 17' 5" E 190.42 FT; S 89 DEG 48' 23" W 604.59 FT ALONG 1/4 SEC. LINE TO BEG. AREA 4.481 AC.

Tax Parcel No. 30:010:0052:

COM N 0 DEG 29' 25" W 1107.7 FT & W 251.51 FT FR SE COR. SEC. 4, T9S, R2E, SLB&M.; S 88 DEG 54' 30" W 290.4 FT; N 1 DEG 5' 30" W 150 FT; N 88 DEG 54' 30" E 290.4 FT; S 1 DEG 5' 30" E 150 FT TO BEG. AREA 1.000 AC.

Tax Parcel No. 30:010:0053:

COM N 464.28 FT & W 3.97 FT FR SE COR. SEC. 4, T9S, R2E, SLB&M.; N 88 DEG 43' 35" W 211.34 FT; N 89 DEG 10' 24" W 674.65 FT; N 89 DEG 30' 33" W 448.89 FT; N 85 DEG 44' 35" W 37.58 FT; N 43 DEG 21' 5" E 1050.38 FT; N 88 DEG 58' 0" E 100.99 FT; S 1 DEG 5' 30" E 148.89 FT; N 88 DEG 54' 30" E 290.39 FT; N 1 DEG 5' 30" W 146.71 FT; S 89 DEG 40' 0" W 253.52 FT; N 43 DEG 30' 30" E .99 FT; N 88 DEG 48' 41" E 2177.64 FT; S 2 DEG 15' 23" W 52.09 FT; N 7 DEG 8' 51" W .94 FT; S 2 DEG 14' 0" W 805.05 FT; N 89 DEG 10' 12" W 750.16 FT; N 89 DEG 25' 14" W 452.71 FT; N 88 DEG 59' 36" W 237.61 FT; N 89 DEG 33' 23" W 190.67 FT TO BEG. AREA 48.447 AC.

EXHIBIT C

FORM OF NOTICE OF REIMBURSEMENT OBLIGATIONS

(See attached.)

WHEN RECORDED, MAIL TO:

NOTICE OF REIMBURSEMENT OBLIGATIONS

Notice is hereby given of a REIMBURSEMENT REQUIREMENT until November 1, 2029, upon development of the parcel of real property described below, for public infrastructure improvements benefitting such parcel of real property. Such parcel of real property is described as follows:

[LEGAL DESCRIPTION]

As of the date set forth below, the foregoing parcel of real property has been assigned Utah County Serial Number _____.

Details of the reimbursement obligations are available at the Payson City Engineer's Office, located at 439 W Utah Avenue, Payson, Utah 84651. Please check here for details on obligations to pay a fair share of public improvement costs as a condition of development approval.

Dated _____, 2021.

PAYSON CITY

By: _____
 Name: _____
 Title: _____

STATE OF UTAH)
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 COUNTY OF UTAH)

On _____, 2021, before me, a notary public in and for the State of Utah, personally appeared _____, known or identified to me to be the _____ of Payson City and the person who executed the foregoing instrument on behalf of said city, who duly acknowledged to me that he executed the same in such capacity.

 Notary Public