

42
1

DEVELOPMENT AND PUBLIC IMPROVEMENT INSTALLATION AGREEMENT FOR BROOKSIDE VILLAGE SUBDIVISION PHASE 3

This DEVELOPMENT AND PUBLIC IMPROVEMENT INSTALLATION AGREEMENT ("Agreement") is made this 28 day of June, 2005, by and between Providence City, a Utah municipal corporation (the "City") and H. F. Development, Inc., a Utah corporation, and Monarch Homes, Inc., a Utah corporation (collectively the "Developer") in contemplation of the following facts and circumstances:

RECITALS

- A. The Developer is the owner of certain parcels of real property (the "Development Property") located within the corporate limits of the City.
- B. The City is a Utah municipal corporation that has jurisdiction over the development of the Development Property.
- C. The Developer has submitted to the City a preliminary plat of the Development Property (the "Preliminary Plat") and the City has approved the Preliminary Plat for Preliminary Approval in accordance with the applicable Subdivision Ordinances of the City.
- D. In accordance with the Preliminary Plat previously submitted to the City and as required by the Subdivision Ordinances of the City, the Developer has submitted to the City the proposed final plat for the development of the Development Property for a residential subdivision to be known as **Brookside Village Subdivision Phase 3** (the "Subdivision"). A copy of the fully executed Final Plat (the "Final Plat") that has been approved by the City is attached hereto as Exhibit "A". The improvements located within the proposed public right of way of the Subdivision are more fully described on the approved construction plans attached hereto as Exhibit "B" (collectively the "Approved Construction Plans"). Said improvements shall be installed by the Developer. The estimated quantities of said improvements, and the costs thereof are more fully set forth on Exhibit "C", attached hereto. The improvements set forth on Exhibit "B" and Exhibit "C" attached hereto are hereinafter collectively referred to as the "Public Improvements".
- E. The Developer has filed suit against the City in U.S. District Court in Salt Lake City in a case styled *H. F. Development, Inc. et al. v Providence City, et al.* Civil No. 1:04CV00009JTG (hereinafter "the Litigation") alleging various claims against the City for credits, reimbursements and payment for certain costs and damages associated with the development and construction of roadways, sewers, water lines, storm drainage, infrastructure and other costs in conjunction with all phases of the Brookside Subdivisions Phases 1, 2 and 3. It is the intent and purpose of the parties to this Agreement to fully settle, compromise and resolve all claims, controversies and disputes between them arising out of or in any way relating to the development and construction of the Brookside Subdivision Phases 1, 2 and 3 and the Litigation, resulting in the dismissal of the Litigation with prejudice and upon the merits.

Ent 894628 Bk 1361 Pg 1510
Date 11-Jul-2005 3:50PM Fee \$0.00
Michael Glead, Rec. - Filed By MG
Cache County, UT
For PROVIDENCE CITY

F. The Developer is desirous: (i) that the City approve the Final Plat and cause the Final Plat to be recorded with the Cache County Recorder as set forth herein; and (ii) to construct and install the Public Improvements in accordance with the Final Plat and the Approved Construction Plans.

G. The City is willing to (i) approve the Final Plat and cause the Final Plat to be recorded with the Cache County Recorder as set forth herein; and (ii) allow the Developer to proceed with the construction of the Public Improvements in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Incorporation of Recitals.** The recitals above are incorporated by reference herein.

2. **Approval of Final Plat and Construction Plans; Construction of Public Improvements by Developer.** The City has reviewed and approved the Final Plat attached hereto as Exhibit "A" and the Approved Construction Plans attached hereto as Exhibit "B". Any changes to the Approved Construction Plans shall require the approval of the City. The Public Improvements shall be constructed and installed according to said Plat and Plans and to all applicable City Codes and Ordinances, State and Federal Law, and any other applicable related codes and/or laws.

a. **Security of Performance.** See Providence City Code 11-5-7 (modified 1/25/00).

i. **Public Improvement Completion Security.** Providence City Code 11-5-7:B (modified 1/25/00). The estimated quantities of the Public Improvements, and the costs thereof are more fully set forth on the Public Improvement Construction Cost Breakdown, attached hereto as Exhibit "C". The Developer tenders to the City Public Improvement Completion Security in the amount of \$ _____, which amount is not less than 110 percent of the estimated costs of the construction of the improvements as reflected in Exhibit "C". In the event that the Developer shall fail or neglect to fulfill the obligations under this agreement, the City shall have the right to construct or cause to be constructed said streets and improvements as shown on the Approved Construction Plans and as required by Providence City Ordinances. The Developer shall be liable to pay to and indemnify the City upon completion of said improvements the final total cost of the City therefore, including, but not limited to, engineering, legal and contingent costs, together with any damages which the City may sustain on account of the failure of the Developer to carry out and execute all of the provisions of this agreement which said sums are secured by the security of performance attached.

In the event the Developer does not pay said sums to the City of Providence within ninety (90) days after demand, said City may proceed and foreclose said Warranty Bond and Public Improvement Completion Security; provided, however, the City may proceed and

foreclose or otherwise obtain payment from said Warranty Bond and security source prior to the end of said ninety (90) day period, if necessary, to protect the City's claims therein from lapsing or expiring, prior to the end of said ninety (90) day period.

ii. Warranty Bond. See Providence City Code 11-5-7:A (modified 1/25/00). The Developer tenders to the City a warranty bond in the amount of \$ _____ which is not less than 10 % of the estimated cost of the construction of said improvements as reflected in Exhibit "C". The warranty bond requirement may be satisfied by the Developer posting 10 % of the estimated cost of the construction of said improvements in an improvement warranty security fund escrow account held and administered by a reputable bank as in previous phases of the subdivision.

b. Completion Time Limit: Providence City Code 11-5-3. All public improvements shall be completed by May 15, 2007, (not to exceed two (2) years after the date the construction drawings were approved by all required entities).

c. "As-Built Construction Plans". See Providence City Code 11-5-4:F.

d. Completion of Construction: Providence City Code 11-5-4:G.

e. Acceptance and Written Guarantee (Warranty Period). Providence City Code 11-5-5. The Warranty Period shall commence upon the date of written acceptance of the Public Improvements by the City and shall expire one (1) year thereafter. Specifically, the Developer shall warrant that the Public Improvements shall remain in good condition and free from all defects in performance, materials and workmanship during the Warranty Period except where such damage or defects are caused by misuse, vandalism, or negligent acts of parties other than the Developer. In the event that the City discovers any defects in any of the Public Improvements during either the construction period or during the Warranty Period, the City shall deliver to the Developer a written notice (the "Public Improvement Repair Notice") a proposed form for which is attached as Exhibit "D", which Public Improvement Repair Notice shall be in substantially the same form and substance as the form attached hereto as Exhibit "D". The Public Improvement Repair Notice shall: (i) state that all or a portion of the Public Improvements are defective; (ii) set forth the nature and extent of the defects in the Public Improvements; (iii) put the Developer on notice that unless the Developer repairs or replaces the defective Public Improvements as required in the Public Improvement Repair Notice within ninety (90) days after Developer's receipt of the Public Improvement Repair Notice, the City may cause the Public Improvements to be repaired or replaced as set forth in the Public Improvement Repair Notice and shall draw upon the Developer Warranty Bond Funds to pay the cost of the repair or replacement of said defective Public Improvements or the City may draw upon said bond funds prior to the lapse or expiration of said security in order to protect the City's interest in the same.

The Developer shall have ninety (90) days, weather permitting, after receipt of the Public Improvement Repair Notice to either repair or replace the defective Public Improvements in accordance with the Public Improvement Repair Notice. If the Developer fails to so repair or replace the defective Public Improvements then the City may cause the defective Public Improvements to be either repaired or replaced, as the case may be. The City shall then have the right to be reimbursed the reasonable cost of the repair or

replacement of the defective Public Improvements from the Developer Warranty Bond Funds or from the developer if said funds are insufficient.

The foregoing notwithstanding, in the event that any defective Public Improvements are of such a nature that it is determined by the City, in its reasonable discretion, that such defective Public Improvements would pose a threat to the public safety if such defective Public Improvements are not repaired or replaced sooner than the above-referenced ninety (90) days, the City shall so notify the Developer by whatever means is reasonable for the given situation and state what the City has determined to be a reasonable time frame for repair or replacement of such defective Public Improvements. The Developer shall then either provide to the City reasonable assurances that such defective Public Improvements shall be either repaired or replaced within the applicable time period or authorize the City to undertake the repair or replacement of the defective Public Improvements in question. In the event that the Developer: (i) is unable to provide to the City reasonable assurances that the defective Public Improvements in question will be repaired or replaced within the time frame provided by the City; and (ii) authorizes the City to undertake the repair or replacement of the defective Public Improvements in question or refuses to give such authorization, the City may undertake the repair or replacement of the defective Public Improvements in question and shall have the right to be reimbursed from the Developer Warranty Bond Funds and/or the Developer for the costs that have been reasonably incurred by the City to undertake the repair or replacement of the defective Public Improvements in question.

f. Sale of Lots. Providence City Code 11-5-2A. The Developer may enter into an agreement with the homeowner to complete the sidewalks. However, the responsibility remains with the Developer.

g. Building Permit Issuance; Minimum Improvements; Providence City Code 11-5-2:A.

h. Developer to Pay Costs of Certain Public Improvements. Except as otherwise set forth herein, the Developer shall be responsible to pay for the costs of the design, construction and installation of the Phase 3 Public Improvements associated with Hammond Lane (200 East), 450 North Street, 100 East Street and the Spring Creek Parkway to the location as depicted on the Approved Construction Plans including all excavation, water and sewer lines and service laterals, sub-base, base, asphalt, and concrete work and engineering fees. Developer shall also be responsible to pay the cost of any soils compaction tests reasonably required by the City. The Developer shall fully bond for these costs as stated in Exhibit C. Except as set forth herein, Providence City will not participate in any of the costs of these Public Improvements.

i. Design and Construction of the Spring Creek Parkway Crossing of Spring Creek. Within 45 days of the date of the execution of this Agreement by Developer, Developer shall arrange for the preparation and pay for all of the engineering plans, associated wetlands study and reasonable mitigation plans for wetlands located on property within the Subdivision, if required, for the construction of a culvert crossing of Spring Creek as part of the extension of the Spring Creek Parkway past the location of that portion of the Spring Creek Parkway to be constructed by Developer as part of the Subdivision (the "Spring Creek Crossing"), seeking to obtain approval for same from the United States Army Corps of Engineers and any other governmental body required to review and approve the

Spring Creek Crossing. The City shall be the applicant and the parties shall cooperate in providing all necessary information and signing the application prior its submission to the Army Corps of Engineers and other governmental entities, as required. After the initial application has been prepared and submitted by the City, the City shall thereafter assume responsibility for the construction of the Spring Creek Crossing extending east of the Spring Creek Parkway from the location to be completed as part of Brookside Village Subdivision Phase 3 as depicted on the Approved Construction Plans, extending east across Spring Creek to the adjoining property at a time to be determined in the sole discretion of the City. Recognizing the need for third-party approvals from other governmental agencies, prior to the receipt of such approvals for the Spring Creek Crossing, the Developer shall be allowed by the City to fully develop all lots in the Phase 3 Subdivision as shown on Exhibit A, including the construction of Spring Creek Parkway to the location as depicted between lots 116 and lot 117 on the Approved Construction Plans. Developer shall arrange for and provide, at no cost to City, for appropriate construction easements, slope easements and any required wetland mitigation on other lots within the Subdivision for the Spring Creek Crossing as approved by the Army Corps of Engineers. The parties acknowledge and agree that some flexibility shall be allowed to shift the final alignment of Spring Creek Parkway from that depicted on the Approved Construction Plans to conform to the final engineering and design of the Spring Creek Crossing as approved by the Army Corps of Engineers; and Developer further agrees that lots 116 and 117 will not be sold, and no building permits will be issued for said lots until approval has been obtained from the Army Corps of Engineers for the Spring Creek Crossing. The agreement to refrain from selling lots 116 and 117 shall last until approval has been obtained from the Army Corps of Engineers for the Spring Creek Crossing or until May 15, 2007, the date for the completion of public improvements for the Subdivision under the provisions of this Agreement, whichever is earlier. If approval has not been obtained from the Army Corps of Engineers for the Spring Creek Crossing by May 15, 2006, the parties agree to negotiate in good faith to evaluate an alternative alignment for the Spring Creek Crossing as it impacts on the configuration of lots 116 and 117 based on the status of discussions at that point in time with the Army Corps of Engineers for approval of the Spring Creek Crossing. Additionally, in the event that the location of the Spring Creek Crossing has to be adjusted to include portions of lots 116 and/or 117 to accommodate the crossing approved by the Army Corps of Engineers, the City agrees to review and approve an amendment of the final plat for Phase 3 of the subdivision to allow for additional lots to be platted in conformity with the new and adjusted location of the crossing in order to allow Developer to develop the same number of lots as in the currently approved Final Plat.

j. Shared Development Costs. The Developer has the right to shared development costs as provided for in Providence City Code 11-5-14, if compliance with the provisions of said section is achieved.

3. Street Improvements. The Developer agrees to construct the following streets as indicated on the Final Plat and the Approved Construction Plans:

- a. 100 East. As part of Phase 3, the City deems necessary the completion of 100 East as shown on the Approved Construction Plans.
- b. Other Streets. The streets shall be constructed as shown on the approved Construction Drawings.
 - i. Other streets include: Part of Hammond Lane (200 E); 450 North Street; and, approved portions of Spring Creek Parkway.
- c. Spring Creek Parkway. Developer shall construct Spring Creek Parkway through Phase 3 up to the point between lots 116 and 117 as depicted on the Approved Construction Plans. Construction of the Spring Creek Crossing from that point to the eastern property line shall be the responsibility of the City, as more fully set forth in Section 2(i).

4. Off Street Parking. All property owners within the subdivision will provide adequate off street parking in accordance with the Subdivision Ordinances.

- a. Spring Creek Parkway. No parking will be allowed on the Parkway.
- b. Driveways accessing Spring Creek Parkway. Driveways accessing Spring Creek Parkway will be designed to minimize the access onto the Parkway as indicated on the Final Plat - Ingress/Egress Easement (Typ) see attached Exhibit "A".

5. Water Improvements. The Developer agrees to install the following water improvements in accordance with the Approved Construction Plans.

- a. The water system shall be consistent with the water model for the Development.
- b. Minimum Line Size for Mains and Laterals. Minimum size for mains and laterals shall be eight inches (8") and constructed of C50 or Class 350 ductile iron pipe.
- c. Water Service into Each Lot. The Developer shall then provide a one inch (1") service line to each building site located within the Subdivision and shall install the appropriate approved yoke, barrel and lid. The meter barrel will be set 5' - 7' inside of property line at grades set by the project engineer. Each unit shall be serviced with a separate meter.
- d. Back Flow Preventers. An approved back flow assembly will be required to be installed on the service side of the meter on each service.
- e. Dead End Water Lines. All dead end water lines shall have a flush hydrant installed and placed inside the parking strip.

6. Fire Protection. The Developer agrees to install all piping and fire hydrants in accordance with the Approved Construction Plans as follows:

- a. Hydrant Spacing. For construction purposes, all fire hydrants will be placed at, no further than, 500 foot intervals. Additional hydrants may be required when the location and size of buildings are determined. No portion of a building shall be allowed at a distance greater than 450 feet from a fire hydrant.
- b. Fire Lines/Hydrants. The Developer must meet City requirements for fire lines and hydrants.
- c. Dedication of Fire Hydrants. All water mains, hydrants, and appurtenances will be dedicated to the City and, where required, the Developer shall

provide to the City an appropriate access easement for flushing and maintaining the hydrant.

d. Exclusive Control of Fire Hydrants by City. Use of fire hydrants shall be under exclusive control of the City or its assigns. During construction, water usage must be approved and a permit issued; and an approved back flow prevention device will be required before any use is permitted.

7. Sanitary Sewer Improvements. The Developer agrees to install the following sanitary sewer improvements in accordance with the Approved Construction Plans:

a. Connection to 12" Sewer Main. Additional extensions and connections shall be installed in accordance with the Approved Construction Plans.

b. 4" Service Stubs. A 4" service stub shall be installed to each lot 5' inside property line and capped, marked with a treated 2X4 extending above the ground and wrapped with a No 14 copper wire.

8. Storm Water Containment. The Developer agrees to install the following storm water improvements in accordance with the Approved Construction Plans:

a. Catch Basins and Storm Drains. Developer shall apply for and obtain approval of the storm water and erosion control plan and thereafter construct and install all catch basins and storm drains shown on the Approved Construction Plans. The Developer shall also provide to the City the easements to access and maintain the storm retention facilities on each lot within the Subdivision containing storm water detention/retention areas as shown on the Final Plat attached as Exhibit A.

b. On-Site Detention. All storm water in excess of natural run-off, herein quantified at 3.14 cubic feet per second per acre, shall be detained on-site. Design of the storm water system must be approved by the City as per City Ordinance 11-4-6.

c. No Wetlands Detention. No wetlands will be used for storm water containment unless permitted by the Army Corps of Engineers.

d. Restrictions of Use and Landscaping of On-Site Detention Facilities and Access/Maintenance easements. Use and landscaping of on-site detention facilities and access/maintenance easements cannot change the structural design or use.

9. Wetlands. The Developer agrees not to fill any portion of the Subdivision that is determined to be jurisdictional wetlands by the Army Corps of Engineers without the authorization from the Army Corps of Engineer. A signed copy of any such agreement shall be provided to Providence City. The Developer further agrees to provide wetlands mitigation, as required by the Army Corps of Engineers, as part of the approval of the Spring Creek Crossing, as more fully described in Section 2(i) and as shown on the Final Plat.

10. Street Lighting. The Developer agrees to install outdoor lighting conduit in the Subdivision as directed by UP&L.

11. **Signs.** Providence City Code 11-4-10. The Developer agrees to pay for the installation of roadway signs as required. Any permanent delineators and barriers required will be furnished, installed and maintained by the Developer. Any temporary delineators will be furnished, installed and maintained by the Developer.

12. **Water Shares.** The Developer agrees to either make available for purchase by the City, or pay the City for the purchase of, one water share for each acre of property within the Subdivision. Said shares shall be in either of the following irrigation companies: (i) Spring Creek Irrigation Company; or (ii) Blacksmith Fork Irrigation Company.

a. The Developer owns 3-1/2 shares of water in the Blacksmith Fork Irrigation Company. Accordingly, the Developer will provide 3-1/2 (Phase 3 contains 12 acres) shares from Blacksmith Fork Irrigation Company, to be purchased by the City at \$750 per share, for a total of \$2,625.

b. Since the Developer does not presently own enough shares of water, the Developer agrees to pay the City for the purchase of 8-1/2 shares of water to be used for the Subdivision in the sum of \$6,375.

13. **Irrigation Ditches.** The Developer agrees to work with Blacksmith Fork Irrigation Company and/or users that are affected by the changes before making any changes or additions on the irrigation ditches on the property.

14. **Construction Procedures.** The Developer agrees to observe the following procedures, as necessary, during the construction period:

a. **Mud Prevention.** The Developer agrees to provide and maintain a gravel access drive, and take any other measures necessary during construction of the Public Improvements, including wash down area, as needed, to prevent the tracking of mud from the Subdivision onto existing roads.

b. **On-Site Inspections.** The Developer will schedule inspections as per City ordinances and policies. On-site inspections will be performed during regular working hours (M-F 8:00-5:00). The Developer is responsible for the costs associated with the inspections.

15. **Water Table Study and Recommended Building Elevations.** An updated study was prepared by Knighton & Crow on behalf of the Developer to measure groundwater at various locations within the Subdivision. The depths of the water table in that general study for the overall Subdivision varied between 4 feet and 8.2 feet. Due to the varying depths of the groundwater and the possibility of higher groundwater in the future, the elevations presented in the study are intended as recommendations only by the Developer. In the event that the purchaser of an individual lot in the Subdivision wishes to construct a home with a basement, then a separate study by a licensed engineer shall be required for each such lot showing it has been individually inspected for evidence of higher groundwater in the past, and provisions made in case the groundwater rises in the future. Such provisions as a sump pump or drain line installed to protect the home against the possibility of higher groundwater in the future may be required based on the results of the specific study for a particular lot. A note shall also be placed on the Final Plat prior to recordation in substantially the following form:

Many areas in Providence City have groundwater problems due to the varying depths of a fluctuating water table. Approval of this plat does not constitute a representation by the City that building at any specified elevation will solve groundwater problems. The solution of these problems is the sole responsibility of the permit applicant and property owner. The City is not responsible for any subsurface water problems which may occur on the property.

16. **City Responsibility for Replacement and Upgrading of 100 West Water Line.** As part of this Agreement, the City will assume the obligation to replace and upgrade the existing water line in 100 West as a system improvement by November 1, 2005. Based on the model prepared by the Developer, the City understands that the current waterline in 100 West, in combination with other waterlines in existence, will be sufficient to service the needs of the subdivision during the interim period between the execution of this Agreement and the completion date of November 1, 2005.

17. **Detention Pond.** In conjunction with development of the subdivision, the City and Developer have agreed to fund and construct a detention pond located on the east side of lots 66 to 73 of the subdivision. In conjunction therewith, the Developer agrees to pay the cost of materials for grading and installation of the basic detention pond including associated piping and boxing, as well as the labor for improvements for the detention pond as designed as designed and shown on the Approved Construction Plans. The City agrees to pay the cost of the following physical materials needed for the detention pond. Those materials include a 1" water supply line from the City water system to supply irrigation, seed and water to irrigate the detention pond, a water barrel, a water meter, pipe, backflow valve, and corresponding materials for the sprinkling system, and the electrical service necessary to operate automatic valves, and the City will be responsible for the design of the sprinkling system.

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

a. **Vested Rights.** Subject to subsection "18b" below, Developer shall have the vested right to develop and construct the Subdivision in accordance with the Final Plat, the Approved Construction Plans and the uses, densities, intensities, general configuration of development phasing, associated with the current City of Providence platting, adopted zoning, subdivision, transportation, open space, and other land use plans, policies, processes, fees, ordinances, and regulations (together the "City's Laws") in existence and effective on the date of final approval of this Agreement (the "Vesting Date"), and applying the terms and conditions of this Agreement.

b. **Reserved Legislative Powers.** Nothing in this Agreement shall limit the City's future exercise of its police power in enacting generally applicable land use laws after the Vesting Date. 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 under this Agreement based upon 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 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 policy exception to the vested rights doctrine.

19. Reimbursement for Various Public Improvements. As part of this Agreement, the City hereby agrees to reimburse and pay to Developer the total sum of One Hundred Fifty Thousand Dollars (\$150,000) as reimbursement for various public improvements associated with the Subdivision. Such payment shall be made within thirty (30) days of the date of the execution of this Agreement by all Developer parties.

20. Impact Fees. As part of this Agreement, the parties acknowledge and agree that impact fees for building permits issued for lots in Brookside Village Subdivision Phase 3 shall be vested and remain at the level currently adopted by the City as of the date of this Agreement, even if increases are approved for impact fees by the City in the future. The current impact fees which shall be applicable for each lot of the subdivision shall be: park impact fees in the sum of Six Hundred Eighty-Seven Dollars (\$687) per lot; road impact fees in the sum of Five Hundred Dollars (\$500) per lot; water impact fees in the sum of Two Thousand Eighty-Four Dollars (\$2,084) per lot; and sewer impact fees in the sum of One Thousand Two Hundred Sixty-Six Dollars (\$1,266) per lot. The City retains the right to assess all other fees which are otherwise applicable to the Project.

21. Dismissal of Litigation. At such time as the approval and execution of this Agreement have occurred, the parties agree that a stipulation, motion and order of dismissal will be executed by counsel for Developer and the City and filed with the United States District Court for the District of Utah dismissing the Litigation with prejudice and upon the merits, with all parties to bear their own costs and attorney's fees.

22. General Release of All Claims. As part of this Agreement, Developer, for and on behalf of itself and its respective owners, managing members, officers, employees, agents, indemnitors, insurers, successors, and assigns, hereby releases and forever discharges Providence City, together with its officers, employees, agents, indemnitors, insurers, successors, and assigns, from any and all claims, demands, liabilities, damages, causes of action, costs and expenses, including attorney's fees, arising out of or in any way connected with the development of the Brookside Village Subdivision and the Litigation. It is the intent of Developer to fully and completely release the City from any and all claims in any way related to the development of the Brookside Village Subdivision, as more fully described in the Litigation and this Agreement, except the obligations arising under the provisions of this Agreement.

23. Miscellaneous Provisions.

a. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

b. Attorneys Fees. In the event it becomes necessary for any party to this Agreement to commence legal action to enforce its rights under this Agreement, the prevailing party shall be entitled to reasonable attorney fees and costs.

c. Notices. All notices shall be in writing and shall be deemed to have been sufficiently given or served when presented personally or when deposited in the United States mail, by registered or certified mail, addressed as follows:

To the City:

The City of Providence
15 South Main Street
Providence, Utah 84332

To the Developer:

H. F. Development, Inc.
302 West Meadow View Ln
Nibley, UT 84321

Such addresses may be changed by notice to the other party given in the same manner as above provided. Any notice given hereunder shall be deemed given as of the date delivered or mailed.

d. Severability. If any term or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be void, voidable or unenforceable, such void, voidable or unenforceable term or provision shall not affect any other term or provision of this Agreement.

e. Captions. The article and section headings contained in this Agreement are for purposes of reference only and shall not limit, expand or otherwise affect the construction of any provisions hereof.

f. Governing Law. This Agreement and all matters relating hereto shall be governed by, construed and interpreted in accordance with the laws of the State of Utah.

g. Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties hereto and, unless otherwise specified, supersedes all prior agreements, representations or understandings between them relating to the subject matter hereof. All preceding agreements relating to the subject matter hereof, whether written or oral, are hereby merged into this Agreement. Provided, however, nothing in this Agreement shall be construed as waiving the requirement that the Developer comply with all applicable ordinances, statutes, codes, rules, regulations, etc., relating to this development, except as expressly waived or modified herein.

h. Construction of Agreement. As used herein, all words in any gender shall be deemed to include the masculine, feminine, or neuter gender, all singular words shall include the plural, and all plural words shall include the singular, as the context may require.

i. Further Action. The parties hereby agree to execute and deliver such additional documents and to take further action as may become necessary or desirable to fully carry out the provisions and intent of this Agreement.

j. Recitals; Exhibits. All factual Recitals set forth herein shall be considered part of this Agreement. All Exhibits attached to this Agreement are expressly made a part hereof as fully as though they were completely set forth herein.

k. Waiver. No waiver of any of the provisions of this Agreement shall operate as a waiver of any other provision regardless of any similarity that may exist between such provisions nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding unless executed in writing by the waiving party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

The City:



PROVIDENCE CITY,
a Utah municipal corporation

By: *Alma H. Leonhardt*
Alma H. Leonhardt, its Mayor

Attest:

Skarlet Bankhead
Skarlet Bankhead, City Recorder

The Developer:

H. F. DEVELOPMENT, INC.

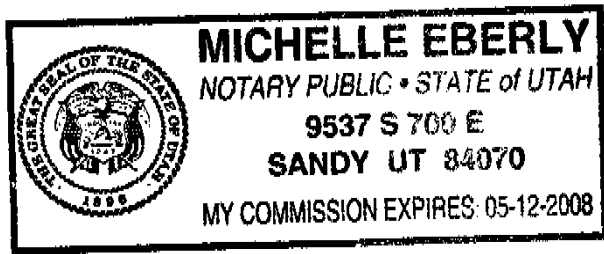
R. Bryan Hutchings
R. Bryan Hutchings, President

MONARCH HOMES, INC.

By: *R. Bryan Hutchings*
Its: *Pres.*

STATE OF UTAH)
 : ss.
COUNTY OF _____)

On the 11TH day of MAY, 2005, personally appeared before me R. BRYAN HUTCHINGS, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is the PRESIDENT of H. F. Development, Inc., and that said document was signed by him in behalf of said corporation by authority of its bylaws or of a resolution of its board of directors, and said PRESIDENT acknowledged to me that said corporation executed the same.



Michelle Eberly

Notary Public

STATE OF UTAH)
 : ss.
COUNTY OF _____)

On the 11TH day of MAY, 2005, personally appeared before me R. BRYAN HUTCHINGS, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is the PRES. of Monarch Homes, Inc., and that said document was signed by him in behalf of said corporation by authority of its bylaws or of a resolution of its board of directors, and said PRESIDENT acknowledged to me that said corporation executed the same.



Michelle Eberly

Notary Public

Exhibit "A"

Final Plat

Ent 894628 Bk 1361 Pg 1523

Exhibit "B"

Approved Construction Plans

Ent 894628 Ik 1361 Pg 1524

Brookside Village Phase 3
Exhibit "C"
Public Improvement Construction Cost Breakdown

Activity Description	Costs
All Sewer (See Allied Construction bid)	66,464
Water Lines (See Allied Construction bid)	77,460
Storm drainage (See Allied Construction bid)	25,141
Curb and Gutter (See Allied Construction bid)	28,700
Electric and Utility Trenching (3280 L.F. @ \$2.36 per Allied bid)	7,741
Sidewalk (3280 L.F. of 4 1/2' wide @ \$8.00 per L.F.)	26,240
Spring Creek Crossing	By city per agreement
Road Construction (See Allied Construction bid)	97,140
Grade, trench and install sprinklers, and seed park area (all materials by city per agreement), per bid by Waterworks, Inc.	7,500
Construction Costs of Phase 3	\$336,386
Amount to Bond (110% of Costs)	\$370,024

**

Exhibit " D"

Form of Public Improvement Repair Notice

[City of Providence Letterhead]

PUBLIC IMPROVEMENT REPAIR NOTICE

[Date]

CERTIFIED MAIL NO. _____

H. F. Development, Inc.
302 West Meadow View Ln
Nibley, UT 84321

Re: Notice to Replace or Repair Defective Public Improvements

Dear Gentlemen:

This is to notify you that pursuant to an inspection by the City of Providence of the Public Improvements installed by you in accordance with that certain DEVELOPMENT AND PUBLIC IMPROVEMENT INSTALLATION AGREEMENT FOR BROOKSIDE VILLAGE SUBDIVISION PHASE 3 (the "Public Improvement Agreement") dated _____, 2005, the City of Providence has determined that certain of the Public Improvements installed by you are defective and require either repair or replacement. The defective Public Improvements are as follows:

[Set forth in detail the nature and extent of the defective Public Improvements]

You are hereby put on notice that unless you either repair or replace the defective Public Improvements as required by this Public Improvement Repair Notice within ninety (90) days *[or state a shorter time frame if the nature of the defective public improvements poses a health and/or safety hazard if not repaired before the 90 day period]* after your receipt of this Public Improvement Repair Notice, weather permitting, the City shall cause the Public Improvements to be repaired or replaced as set forth herein and shall draw upon the Developer Warranty Bond Funds deposited in accordance with the terms and conditions of the Public Improvement Agreement to reimburse the City for the cost of the repairs or replacement of said Public Improvements.

Sincerely Yours,
Providence City,

By: _____

Print Name