

## REQUEST FOR COUNCIL ACTION

**SUBJECT:** COPPER VALLEY ESTATES SUBDIVISION

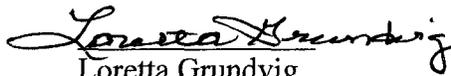
**SUMMARY:** Consider approving and authorizing the Mayor to sign a Development Agreement and a Deferral Agreement for the Copper Valley Estates Subdivision located at approximately 5600 West 8600 South.

**FISCAL:**  
**IMPACT:** The City will collect a deposit from each phase for future construction of 8600 South Street.

**STAFF RECOMMENDATION:**  
Staff recommends that City Council approve the Development Agreement and Deferral Agreement as prepared.

**MOTION RECOMMENDED:**  
I move to approve Resolution 15-97 authorizing the Mayor to execute the Development Agreement and a Deferral Agreement by and among the City of West Jordan and L.H. Perry Investments, LLC.

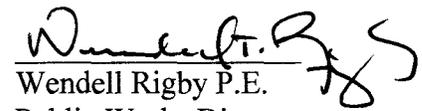
**Prepared by:**

  
Loretta Grundvig  
ODA Dev Coordinator

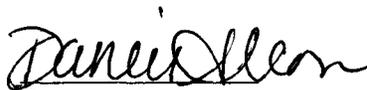
**Reviewed by:**

  
Nate Nelson  
City Engineer

**Reviewed by:**

  
Wendell Rigby P.E.  
Public Works Director

**Reviewed as to legal form:**

  
Darien Alcorn  
Acting City Attorney

**Recommended by:**

  
Bryce Haderlie  
Interim City Manager

## **BACKGROUND DISCUSSION:**

Copper Valley Estates Subdivision received preliminary approval as a three-phase subdivision located at approximately 5600 West 8600 South, immediately east of the Mountain View Corridor. Because it is a multi-phased subdivision, City staff is recommending that the parties enter into the proposed development agreement, attached.

In addition, the property is located adjacent to the master planned 8600 South Street. Per City Code, dedication, design and construction of boundary streets are required unless deferred. In the future it is anticipated that the City and UDOT identify funding to construct a grade separated crossing over the Mountain View Corridor. However, the bridge has not been finally designed, and UDOT and City have not yet identified funding for construction of the bridge. Consequently, a road constructed at this time would dead-end into Mountain View Corridor.

Pursuant to the preliminary design for the 8600 South bridge, property is shown on the preliminary plat as a future dedication, but it is proposed that the dedication, design and construction of 8600 South be deferred. Per City Code, a planning commission recommendation is required prior to approval of the deferral. On May 19, 2015, the Planning Commission gave a positive recommendation based on the findings required by City Code, some of which are summarized as follows:

Dedication may be deferred if the developer does not own and cannot reasonably acquire the property to be dedicated, the location of the dedication cannot be reasonably determined, or the location of the dedication is within a remainder parcel shown on a subdivision plat. As stated above, the location of the dedication is not known because there is not a final design for the bridge.

Design may be deferred if the developer cannot reasonably design the improvements due to unique physical characteristics of the real property, the dedication is being deferred and reasonably requires that the design also be deferred, or the construction is being deferred and reasonably requires that the design also be deferred. The dedication is being deferred awaiting the final design by UDOT and reasonably required the design to also be deferred, since the exact location of the Mountain View Corridor overpass has not been finalized.

Construction may be deferred if: (1) the city engineer has prepared, and city council has reviewed the estimated cost of the deferred improvements based on the most recent and most applicable costs incurred by the city in similar projects and an analysis of the feasibility of installing the improvements within the twenty four (24) month period described in this article; (2) the improvements for which deferred construction is requested are eligible public improvements or they include public improvements for which some or all of the dedication is being deferred; and (3) based on physical characteristics of the development and affected real property it is not feasible to install the improvements within the twenty four (24) month period described above and therefore deferring the installation to a future date is preferable to the city; and (4) the deferred improvements are not necessary for public health or safety or as a prerequisite to orderly development of the surrounding area.

The City Engineer prepared and the developer has agreed to the estimated costs shown in the exhibit to the agreement. The improvements are eligible public improvements and shown on the City's transportation master plan. It is not feasible to construct the 8600 South Improvements within twenty four months due to the need for a final design and funding for the Mountain View Corridor overpass, and the physical characteristic of the property is such that it is located immediately adjacent to the Mountain View corridor, making construction reliant on the bridge design and funding. This section of 8600 South, which would dead-end into Mountain View Corridor, is not needed for the public health and safety or the orderly development of the subdivision, which will start with a Phase that is not adjacent to 8600 South. For these reasons, it is recommended by staff that the deferral agreement be approved.

**THE CITY OF WEST JORDAN, UTAH**  
A Municipal Corporation

RESOLUTION NO. 15-97

A RESOLUTION AUTHORIZING THE EXECUTION BY THE MAYOR  
OF A DEVELOPMENT AGREEMENT AND A DEFERRAL AGREEMENT  
BETWEEN THE CITY OF WEST JORDAN AND L.H. PERRY INVESTMENTS, LLC

Whereas, the City Council has reviewed and considered the attached Development Agreement between the City and L.H. Perry Investments, LLC; and

Whereas, the City Council has reviewed and considered the attached Deferral Agreement between the City and L.H. Perry Investments, LLC; and

Whereas, the City Council finds that pursuant to West Jordan City Code Title 8, Chapter 3, Article B (the "Deferral Ordinances"), dedication may be deferred because the location of the dedication cannot be reasonably determined; and

Whereas, the City Council finds that pursuant to the Deferral Ordinances, design may be deferred because the dedication is being deferred and reasonably requires that the design also be deferred, and the construction is being deferred and reasonably requires that the design also be deferred; and

Whereas, the City Council finds that pursuant to the Deferral Ordinances, construction may be deferred because: (1) the city engineer has prepared, and city council has reviewed the estimated cost of the deferred improvements based on the most recent and most applicable costs incurred by the city in similar projects and an analysis of the feasibility of installing the improvements within the twenty four (24) month period described in this article; (2) the improvements for which deferred construction is requested are eligible public improvements or they include public improvements for which some or all of the dedication is being deferred; and (3) based on physical characteristics of the development and affected real property it is not feasible to install the improvements within the twenty four (24) month period described above and therefore deferring the installation to a future date is preferable to the city; and (4) the deferred improvements are not necessary for public health or safety or as a prerequisite to orderly development of the surrounding area; and

Whereas, the City Council has determined the Development Agreement and Deferral Agreement to be in the best interest of the City; and

Whereas, the City Council of the City of West Jordan desires that the agreements be executed by the Mayor; and

Whereas, the Mayor is authorized to execute agreements.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST JORDAN, UTAH, THAT:

Section 1. The Mayor is authorized and directed to sign the Development Agreement between the City of West Jordan and L.H. Perry Investments, LLC, attached hereto.

Section 2. The Mayor is authorized and directed to sign the Deferral Agreement between the City of West Jordan and L.H. Perry Investments, LLC, attached hereto.

Section 3. This resolution shall take effect immediately.

Adopted by the City Council of West Jordan, Utah, this 10<sup>th</sup> day of June, 2015.

CITY OF WEST JORDAN

ATTEST:

By: \_\_\_\_\_  
Mayor Kim V. Rolfe

\_\_\_\_\_  
MELANIE BRIGGS, City Clerk

Voting by the City Council

"AYE"

"NAY"

Chad Nichols

\_\_\_\_\_

\_\_\_\_\_

Chris McConnehey

\_\_\_\_\_

\_\_\_\_\_

Ben Southworth

\_\_\_\_\_

\_\_\_\_\_

Judy Hansen

\_\_\_\_\_

\_\_\_\_\_

Sophie Rice

\_\_\_\_\_

\_\_\_\_\_

Jeff Haaga

\_\_\_\_\_

\_\_\_\_\_

Mayor Kim V. Rolfe

\_\_\_\_\_

\_\_\_\_\_

Recording Requested By and  
When Recorded Return to:  
West Jordan City  
Attention: City Clerk  
8000 South Redwood Road  
West Jordan, Utah 84088

---

For Recording Purposes Do  
Not Write Above This Line

## **DEVELOPMENT AGREEMENT COPPER VALLEY SUBDIVISION**

This Development Agreement (this “**Agreement**”) is made and entered into and made effective as of the date entered below (the “**Effective Date**”), by and among West Jordan City, a municipality and political subdivision of the State of Utah (the “**City**”), and L.H. Perry Investments, LLC, a Utah limited liability company (the “**Developer**”). The City and the Developer may from time to time be collectively referred to as the “**Parties**.”

### **RECITALS**

A. Developer has prepared and presented to the City a development application for the Copper Valley Subdivision, which is a three-phase development, to be recorded as three interrelated phases upon the property described in **Exhibit A** (hereinafter referred to as the “**Project**”). The application package has been submitted and reviewed by the City pursuant to the requirements of the West Jordan City Code and related protocols and policies and other applicable zoning, engineering, fire safety and building requirements. The resulting development plan, preliminary and final approved preliminary and final subdivision plat(s), engineering construction drawings, conveyance documents, title reports and other documents submitted during the City’s review and approval process will be referred to herein as the “Copper Valley Development Documents” or the “**Development Documents**.”

B. Pursuant to the authority of Utah Code Ann. §10-9a-102(2) and the specific provisions of the West Jordan City Code, the City has determined to enter into this Development Agreement with Developer for the purpose of formalizing certain obligations of the Parties with respect to the Project, and such other matters as the City and the Developer have agreed.

C. In connection with the development of the Project pursuant to the Development Documents, the parties anticipate entering into one or more agreements related to the construction of public improvements.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### ARTICLE I LEGAL AUTHORITY AND PURPOSE

- 1.1 **Purpose.** The City and Developer represent that they have the legal authority to enter into and perform their obligations under this Agreement and that the City has determined that this Agreement effectuates the above-referenced public purposes, objectives and benefits. This Agreement and the approved Development Documents and Land Use Laws (defined below) will govern the City and the Developer with respect to development of the Project.
- 1.2 **Recitals and Exhibits.** The above Recitals and all Exhibits hereto are hereby incorporated by reference into this Agreement.
- 1.3 **Conditions.** Each of the City and Developer is entering into this Agreement in anticipation of the satisfaction of certain conditions precedent and/or subsequent (the “Conditions”), which, if not satisfied, will frustrate the purposes of this Agreement. Accordingly, if the Conditions are not satisfied or otherwise waived by the Parties, this Agreement shall be rendered null and void and none of the parties hereto shall have any further obligation to the other arising out of this Agreement. The Parties recognize that some of the Conditions may be satisfied contemporaneously with, prior to or after the execution of this Agreement, but such Conditions have been identified herein for purposes of setting forth the intent of the Parties. For purposes of this Agreement, the following shall constitute the “Conditions”:
  - A. the final non-appealable approval and acceptance of this Agreement by the City Council; and
  - B. recordation of final subdivision plat for Phase 1 of the Project.
- 1.4 **Vested Rights.** Subject to satisfaction of the Conditions Precedent, Developer shall have the vested right to develop and construct the Project in Phases in accordance with the Development Documents and the zoning, subdivision, development, growth management, transportation, environmental, open space, and other land use plans, policies, processes, ordinances, and regulations of the City (together, the “Land Use Laws”) in existence and effective on the date of final approval of this Agreement and applying the terms and conditions of this Agreement. Subject to the reservation of the City’s legislative powers as set forth in Section 1.5 below, to the extent of any inconsistency between this Agreement and the Land Use Laws, this Agreement and the

approved Development Documents will govern the City and the Developer with respect to development of the Project.

- 1.5 **Reserved Legislative Powers.** Nothing in this Agreement shall limit the future exercise of the police power of the City in enacting generally applicable land use laws after the date of this Agreement. 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 described in Section 1.4 based on a good faith application of the policies, facts, and circumstances meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah. Any such proposed change, including the imposition of any moratoria, affecting the vested rights of the Developer granted under this Agreement shall be binding upon Developer only if (a) such change is of general application to all development activity in the City; and (b) the Developer receives, unless in good faith the City declares an emergency, prior written notice and an opportunity to be heard with respect to the proposed change and its applicability to the Project and the rights granted hereunder.

## ARTICLE II PROJECT DEVELOPMENT

### 2.1 **Developer Obligations.**

2.1.1 **Phased Development.** Copper Valley Subdivision will consist of three subdivision phases as shown in **Exhibit B** (each a “**Phase**,” and collectively, the “**Phases**”). The final plat for each Phase (each a “**Final Plat**,” and collectively, the “**Final Plats**”) shall be recorded and construction shall be performed in the following sequence: Phase 1 first, Phase 2 second and Phase 3 third. The parties understand and agree that the City will not accept, approve or allow recording of the Final Plats out of sequence, but multiple sequential Phases may be accepted, approved and recorded concurrently. Except to the extent approved by the City, the Final Plats and the Plans and Specifications for each Phase shall comply in all material respects with the Development Documents and Land Use Laws.

2.1.2 **Conveyance or Dedication of Required Easements.** Prior to the construction of a particular facility, Developer shall convey or dedicate or cause to be conveyed and dedicated to the City 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 Final Plat for each applicable Phase.

#### 2.1.3 **Access Roads.**

A. Developer agrees that on or before issuance of building permits within any Phase, it shall design, construct and dedicate to the City all roads and other public

infrastructure for that Phase and all preceding Phases as shown on the applicable Final Plats therefore. This shall not include a requirement that the Developer construct any portion of the master planned improvements for 8600 South Street or water, sanitary sewer or stormwater improvements located therein, that abuts the Project. Instead, Developer and City have entered into a Deferral Agreement which outlines the basis on which Developer will participate in the costs of the future development of 8600 South Street (the “**8600 South Contribution**”).

B. All access and connecting roads, excepting 8600 South Street, shall be completed in accordance with approved engineering plans and specifications approved in connection with the Final Plat for the various Phases of the Project (the “**Plans and Specifications**”), which approval shall not be unreasonably withheld, conditioned or delayed.

**2.1.4 Public Streets, Culinary Water, Sanitary Sewer and Stormwater Improvements.** Developer shall design, construct and dedicate to the City all public streets and other public infrastructure required by the West Jordan City Code, West Jordan Master Plans and West Jordan City standards or shown on the approved Final Plat and Plans and Specifications for the applicable Phase, excepting 8600 South Street (hereinafter referred to as the “**Public Improvements**”), which, except as otherwise agreed by the City, shall not be approved unless they comply with the Development Documents and the Land Use Laws.

A. Without limiting the foregoing, the Developer shall not be required to construct those certain master planned improvements for 8600 South, inclusive of street, culinary water, sanitary sewer and stormwater improvements. The 8600 South Contribution shall be pro-rated, based on the approximate number of lots in each Phase of the Project as follows:

1. Phase 1 shall be responsible for 33.33% of the 8600 South Contribution.
2. Phase 2 shall be responsible for 33.33% of the 8600 South Contribution.
3. Phase 3 shall be responsible for 33.33% of the 8600 South Contribution.

None of the Public Improvements are eligible for reimbursement.

B. Developer hereby agrees that in connection with the construction of each Phase, Developer shall install the Public Improvements shown on the Plans and Specifications and Development Documents to be completed in connection with each such Phase. The City shall have no obligation to extend infrastructure to serve any Phase. The City shall not be required to permit connection at any location or by any method other than as shown and approved in the Development Documents.

C. For each Phase, Developer shall enter into an improvement construction and assurance agreement in a form acceptable to the West Jordan City Attorney prior to recording the Final Plat for that Phase. The improvement construction and guarantee agreement shall include, at a minimum, the Planned Improvements, or portion thereof, associated with that Phase.

**2.1.5 Construction Standards; Completion of Construction.** Notwithstanding any other provisions of this Agreement, all Public Improvements shall be constructed in compliance with the approved Plans and Specifications for the applicable Phase and shall be completed within two (2) years after recording the Final Plat for that Phase.

**2.1.6 Payment of Fees.** All required fees associated with the recordation of each Phase shall be paid by Developer prior to recording the Final Plat for that Phase.

**2.1.7. Construction Process.**

A. Following City approval of the Final Plat and Plans and Specifications for a given Phase, Developer shall not make any changes to such Final Plat and Plans and Specifications without the prior written consent of the City.

B. Developer shall pay for and complete all soils, materials and traffic testing required by the Land Use Laws for each Phase in connection with construction of the Planned Improvements and Public Improvements associated with such Phase. Such testing shall be performed by testing agencies reasonably acceptable to the City Engineer. Copies of all test results shall be submitted to the City Engineer within thirty-six hours after they are issued by the testing agency. The City Engineer may request that the test reports be certified by the testing agency.

**2.1.8 File Record Documents.** Developer shall file with the City Engineer "Record Documents" (i.e. as built drawings) conforming to City requirements as set forth in the Land Use Laws.

**2.1.9 Indemnification.** Developer shall, at all times, protect, indemnify, save harmless and defend the City and its agents, employees, officers and elected officials from and against any and all claims, demands, judgments, expense, and all other damages of every kind and nature made, rendered, or incurred by or in behalf of any person or persons whomsoever, including the parties hereto and their employees, which may arise out of any act or failure to act by Developer, Developer's agents, employees, and contractors in connection with the performance and execution of the work necessary to complete the Planned Improvements and Public Improvements.

**2.2 Provision of Certain Water and Sewer Utility Services.** The City agrees that it shall make available to each Phase (subject to completion of the Planned Improvements and Public Improvements to be completed in connection with each such Phase, application for service,

issuance of applicable permits and payment of connection fees and applicable commodity usage rates) culinary water, sanitary sewer and storm water, as well as garbage collection on public streets for residential properties and related services provided by the City to its citizens generally. Culinary water, sanitary sewer and storm water utility services will be provided through Public Improvements constructed by the Developer in connection with each Phase. The City shall have no obligation to extend infrastructure to serve any Phase. The City shall not be required to permit connection at any location or by any method other than as shown and approved in the Development Documents.

2.3 **Development to be Consistent with Final Plats and Plans and Specifications.** Except as expressly provided in this Agreement, all development, whether by the Developer or a successor in interest, will be consistent with this Agreement and the finally approved Final Plats and Plans and Specifications.

ARTICLE III  
IMPACT FEES

3.1 **Impact Fees; Costs of Application Processing.** The Developer will be assessed and required to pay impact fees calculated by the City in accordance with the Utah Impact Fees Act and assessable prior to or concurrent with recordation of the applicable Final Plat. In addition, Developer will be responsible for paying all City fees and charges appropriately assessed for projects of the type being presented by Developer, including payment of hourly charges for all internal expert reviews and involvement assessed in accordance with uniformly applicable rates. Because impact fees are assessed at the time of development, impact fees shall be assessed prior to or concurrent with recordation of the applicable Final Plat.

3.2 **Maintenance of Planters, Trees and Other Landscaping in Median Spaces and Alongside Streets and Sidewalks Appurtenant to, or Within, the Development.** The City shall have the long term and permanent responsibility for the maintenance of all parks, open space and trails (if any) within the Project area dedicated to the City, including landscaping that exists along streets and sidewalks within public rights-of-way.

3.3 **Maintenance of Detention Basin Within, the Development.** The Developer shall establish a home owners association which shall have the long term and permanent responsibility to maintain the detention/retention basin in the Project as shown on the Development Documents.

ARTICLE IV  
DEFAULT AND COSTS

4.1 **Default.** In the event of a failure by any party to comply with the commitments set forth herein, within thirty (30) days of written notice of such failure from the other party, the non-defaulting party shall have the right to pursue any or all of the following remedies, which right shall be cumulative:

4.1.1 To cure such default or enjoin such violation and otherwise enforce the requirements contained in this Agreement; and

4.1.2 To enforce all rights and remedies available at law and in equity including, but not limited to, injunctive relief, specific performance and/or damages, except consequential damages.

4.2 **Insolvency.** Insolvency, bankruptcy or any voluntary or involuntary assignment by any party for the benefit of creditors, which action(s) are unresolved for a period of 180 days shall be deemed to be a default by such party under this Article IV.

4.3 **Court Costs and Attorneys Fees.** In the event of any legal action or defense between the Parties arising out of or related to this Agreement, or any of the documents provided for herein, the prevailing party shall be entitled, in addition to the remedies and damages, if any awarded in such proceedings, to recover their costs and reasonable attorneys' fees.

## ARTICLE V ASSIGNMENT AND RECORDATION

5.1 **Assignment and Transfer of Development.** The Developer shall not assign its obligations under this Agreement or any rights or interests herein, and except as provided below shall not convey the Project or any portion thereof, without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed if the proposed transferee: (a) shall have the qualifications and financial responsibility necessary and adequate to fulfill the obligations undertaken pursuant to this Agreement and any then applicable Development Documents; and (b) by instrument in writing, shall have expressly assumed all of the obligations of the Developer under this Agreement and any then applicable additional agreements and agreed to be subject to all of the conditions and restrictions arising under this Agreement or any Development Documents.

If only a portion of the Project is assigned and/or conveyed under this section 5.1, a reasonable allocation of the Developer's duties appurtenant to that portion will be made.

Developer agrees that any Developer responsibility for constructing master planned roads and other material public improvements in connection with the Project as originally presented and approved, and as agreed to herein, cannot be avoided by assigning portions of the Project to one or more third parties and then claiming that Developer's building of the required public improvements is not justified by the impact of the remainder of the Project.

5.1.1 The provisions of this Section 5.1 shall not prohibit the granting of any security interests for financing the acquisition and development of the Project, or any applicable

Phase thereof, subject to the Developer complying with applicable law and the requirements of this Agreement.

5.1.2 A change in the majority ownership or control of the Developer shall be deemed a transfer requiring the consent of the City pursuant to the requirements of this Section 5.1. Notwithstanding the foregoing sentence, a transfer of all or a portion of the Project or change in the majority ownership or control of the Developer is permitted without the City's consent under the following circumstances: (i) a transfer occurs to an entity that is an affiliate of the Developer, (ii) a transfer or change in ownership occurs as a result of a merger or acquisition of Developer resulting in Developer and its principal(s) having the majority interest and control of the succeeding or resulting entity, and/or (iii) a transfer occurs only by way of security for, and only for, the purpose of obtaining financing necessary to enable the Developer, or its permitted successor in interest, to perform its obligations under this Agreement or any of the Development Documents.

5.1.3 In the event of a City approved transfer of any portion of the Project and upon assumption by the transferee of the Developer's obligations under this Agreement and the Development Documents, the respective transferee shall have the same rights and obligations as the Developer under this Agreement and the Development Documents, and the Developer shall be released from any further obligations with respect to that portion of the Project, provided that any successor shall first execute and deliver such agreements and instruments as the City may require to bind the successor under the terms of this Agreement and any related and subsequent agreements between the parties; and provided further that the provisions of this Agreement with respect to master planned roads and other public improvements shall continue as an obligation of Developer unless expressly waived in writing by the City.

5.2 **Recordation.** After its execution, this Agreement shall be recorded in the office of the County Recorder at the expense of the Developer. Each commitment and restriction on development set forth herein shall be a burden on the real property constituting the Project, shall be appurtenant to and for the benefit of the City and shall run with the land.

## ARTICLE VI REIMBURSEMENT

6.1 **Reimbursement for Public Improvements.** Reimbursement for public improvements may be addressed by a separate reimbursement agreement for each Phase entered into concurrently with or subsequent to this Agreement. Such reimbursement agreements, if any, shall be entered into prior to recordation of the affected Final Plat and shall comply with the West Jordan City Code, the Development Documents and this Agreement.

ARTICLE VII  
GENERAL MATTERS

- 7.1 **Amendments.** Any alteration or change to this Agreement shall be made only after complying with the same procedures followed for the adoption and approval of this Agreement.
- 7.2 **Captions and Construction.** This Agreement shall be construed according to its fair and plain meaning and as if prepared by all Parties hereto. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates. Furthermore, this Agreement shall be construed so as to effectuate the public purposes, objectives and benefits set forth herein. As used in this Agreement, the words “include” and “including” shall mean “including, but not limited to” and shall not be interpreted to limit the generality of the terms preceding such word.
- 7.3 **Laws and Forum.** This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns, and shall be construed in accordance with Utah law. Any action brought in connection with this Agreement shall be brought in a court of competent jurisdiction located in Salt Lake County, Utah.
- 7.4 **Legal Representation.** Each of the Parties hereto acknowledge that they either have been represented by legal counsel in negotiating this Agreement or that they had the opportunity to consult legal counsel and chose not to do so. In either event this Agreement has no presumptions associated with the drafter thereof.
- 7.5 **Non-Liability of City Officials.** No officer, representative, agent or employee of a party hereto shall be personally liable to any other party hereto or any successor in interest or assignee of such party in the event of any default or breach by the defaulting party, or for any amount which may become due the non-defaulting party, or its successors or assigns, or for any obligation(s) arising under the terms of this Agreement.
- 7.6 **No Third Party Rights.** Unless otherwise specifically provided herein, the obligations of the Parties set forth in this Agreement shall not create any rights in or obligations to any other persons or third parties.
- 7.7 **Force Majeure.** Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes; labor disputes; inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature; governmental restrictions, regulations or controls; judicial orders; enemy or hostile government actions; wars; civil commotions; fires, floods, earthquakes or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that

prevention, delay or stoppage. Any party seeking relief under the provisions of this paragraph must have notified the other party in writing of a force majeure event within thirty (30) days following occurrence of the claimed force majeure event.

- 7.8 **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:

The City:                   West Jordan City  
                                  8000 South Redwood Road  
                                  West Jordan, Utah 84088  
                                  Attention: City Clerk

Developer:                 L.H. Perry Investments, LLC  
                                  17 E. Winchester St., Ste. 200'  
                                  Murray, UT 84107  
                                  Attention: William O. Perry, IV, Esq.

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.

- 7.9 **Entire Agreement.** This Agreement, together with the Exhibits attached hereto, documents referenced herein and all regulatory approvals given by the City for the Project prior to the date hereof, contain and constitute the entire agreement of the Parties with respect to the subject matter hereof and supersede any prior promises, representations, warranties, inducements or understandings between the Parties which are not contained in such agreements, regulatory approvals and related conditions. It is expressly agreed by the Parties that this Agreement and the additional agreements between the Developer and the City, as contemplated and referred to elsewhere in this Agreement, are intended to and shall govern the development of the Project. It is expressly acknowledged by the Parties that additional agreements may be entered into by or among the Parties and all such shall be included as Development Documents.
- 7.10 **Effective Date.** This Agreement shall be effective upon the signing and execution of this Agreement by all Parties which, upon its occurrence, shall be deemed to have occurred as of the Effective Date.
- 7.11 **Termination.** This Agreement shall terminate upon mutual written agreement of the parties hereto, failure of the Conditions to occur on or before December 31, 2016 or 10 years after the Effective Date, whichever occurs first.
- 7.12 **Further Action.** The Parties hereby agree to execute and deliver such additional documents and to take all further actions as may become necessary or desirable to fully carry out the provisions and intent of this Agreement.





**EXHIBIT A**  
**to**  
**DEVELOPMENT AGREEMENT**  
**COPPER VALLEY SUBDIVISION**

---

**(Legal Description of Property)**

## LEGAL DESCRIPTION

A portion of the SE1/4 of Section 35, Township 2 South, Range 2 West, Salt Lake Base & Meridian, West Jordan, Utah, more particularly described as follows:

Beginning at the southeast corner of Lot 108, BLOOMFIELD FARMS Subdivision, according to the Official Plat thereof on file in the Office of the Salt Lake County Recorder, located  $S0^{\circ}11'53''E$  along the Section line 1,727.92 feet and  $SS9^{\circ}59'30''W$  31.00 feet from the East  $\frac{1}{4}$  Corner of Section 35, T2S, R2W, S.L.B. & M.; thence  $S0^{\circ}11'53''E$  parallel with, and 31' westerly of the Section line 637.55 feet; thence  $S7^{\circ}09'35''W$  179.85 feet; thence  $S0^{\circ}11'53''E$  55.90 feet; thence  $SS0^{\circ}13'45''W$  4.67 feet to the south line of said Section 35 at a point located  $N89^{\circ}39'37''W$  along the Section line 57.64 feet from the Southeast Corner of said Section; thence  $N89^{\circ}39'37''W$  along the Section line 1,131.66 feet; thence  $N9^{\circ}01'37''W$  153.78 feet; thence  $N3^{\circ}42'36''W$  717.62 feet to the south line of said BLOOMFIELD FARMS Subdivision, the previous 2 (two) courses along the easterly line of the Mountain View Corridor; thence  $N89^{\circ}59'30''E$  along said Subdivision 1,225.81 feet to the point of beginning.

Contains: 23.89+/- acres

**EXHIBIT B**  
**to**  
**DEVELOPMENT AGREEMENT**  
**COPPER VALLEY SUBDIVISION**

---

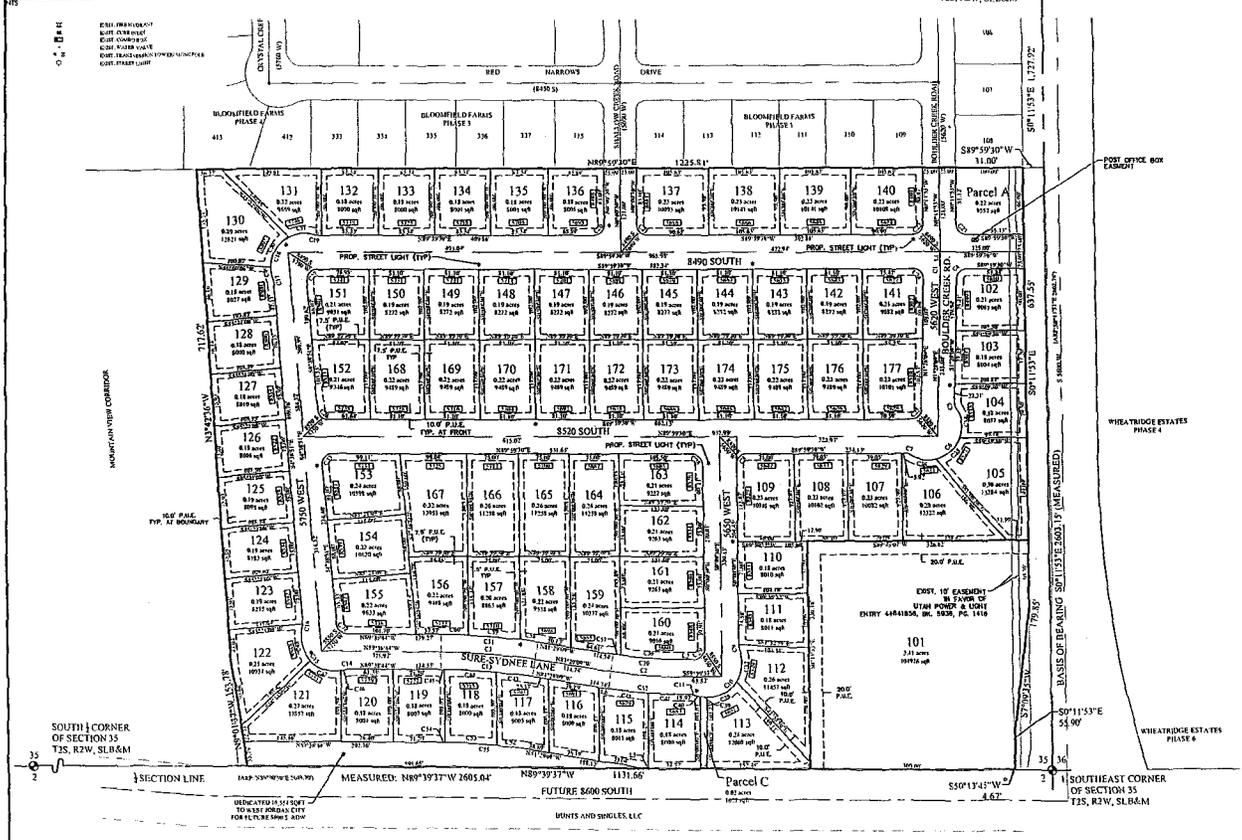
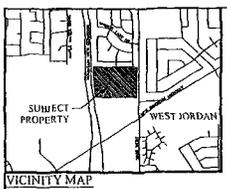
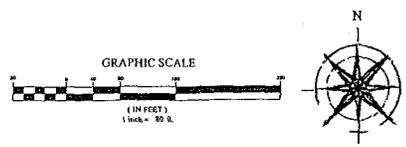
**(Phase Drawing and Approved Preliminary Plat)**

**SEE ATTACHED**



# PRELIMINARY PLAT COPPER VALLEY ESTATES

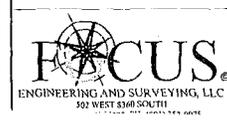
LOCATED IN THE SE 1/4 OF SECTION 35, T2S, R2W, S1.E.B.&M.  
WEST JORDAN, UTAH



AREA	LENGTH	BEARING
L1	12.11'	S89°59'30"W
L2	8.81'	S89°59'30"W
L3	11.00'	S89°59'30"W
L4	11.00'	S89°59'30"W
L5	11.00'	S89°59'30"W
L6	11.00'	S89°59'30"W
L7	7.87'	S89°59'30"W

CHANCE	RADIUS	AREA	LENGTH	CURVE DIRECTION	CHORD BEARING
C1	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C2	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C3	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C4	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C5	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C6	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C7	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C8	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C9	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C10	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C11	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C12	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C13	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C14	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C15	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C16	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C17	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C18	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C19	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C20	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C21	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C22	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C23	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C24	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C25	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C26	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C27	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C28	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C29	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C30	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C31	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C32	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C33	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C34	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C35	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C36	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C37	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C38	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C39	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C40	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C41	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C42	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C43	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C44	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C45	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C46	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C47	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C48	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C49	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C50	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C51	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C52	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C53	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C54	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C55	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C56	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C57	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C58	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C59	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W
C60	300.00'	77,000.00'	1,100.00'	S	S89°59'30"W

NOTE: PARCELS A (DETACHED ROAD) AND PARCEL C (PEDESTRIAN ACCESS) ARE TO BE OWNED AND MAINTAINED BY HOA.



CITY PLANNING COMMISSION  
APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D. 20\_\_\_\_ BY THE WEST JORDAN CITY PLANNING COMMISSION

CITY ENGINEER  
I HEREBY CERTIFY THAT I HAVE HAD THIS PLAT EXAMINED BY THIS OFFICE AND IT IS CORRECT AND IN ACCORDANCE WITH INFORMATION ON FILE AND IS HEREBY APPROVED

CITY COUNCIL  
PRESENTED TO THE WEST JORDAN CITY COUNCIL THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D. 20\_\_\_\_ AT WHICH TIME THIS SUBDIVISION WAS APPROVED AND ACCEPTED.

APPROVAL AS TO FORM  
APPROVED AS TO FORM THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D. 20\_\_\_\_

SALT LAKE COUNTY HEALTH DEPT.  
APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ A.D. 20\_\_\_\_

EASEMENT APPROVAL  
CENTURYLINK \_\_\_\_\_ DATE \_\_\_\_\_  
ROCKY MOUNTAIN POWER \_\_\_\_\_ DATE \_\_\_\_\_  
QUESTAR GAS CO. \_\_\_\_\_ DATE \_\_\_\_\_  
COMCAST CABLE CO \_\_\_\_\_ DATE \_\_\_\_\_

WEST JORDAN CITY ATTORNEY WEST JORDAN CITY RECORDER WEST JORDAN CITY SHERIFF WEST JORDAN CITY SHERIFF

**DEFERRAL AGREEMENT**  
**Copper Valley Subdivision**

This Deferral Agreement ("Agreement") is entered into by and between L.H. Perry Investments, LLC, a Utah limited liability company ("Developer"), and the City of West Jordan, a municipality and political subdivision of the State of Utah (the "City").

**RECITALS**

WHEREAS, Developer desires to subdivide and develop a parcel of real property (the "Property") located at approximately west of 5600 West and 8600 South in West Jordan, Utah, consisting of approximately 23.89 acres, as depicted on the Copper Valley Subdivision plat and phasing plan, a draft of which is attached hereto as **Exhibit A**; and

WHEREAS, pursuant to applicable provisions of the West Jordan City Code, Developer is required, in connection with the subdivision and development of the Property (the subdivision and development are referred to collectively as the "Development") to design, construct and dedicate that portion of 8600 South Street directly adjacent to the south of the Property (the "8600 South Improvements"), unless such design, dedication and construction is deferred in accordance with West Jordan City Code; and

WHEREAS, pursuant to West Jordan City Code Title 8, Chapter 3, Article B (the "Deferral Ordinances"), dedication may be deferred if the developer does not own and cannot reasonably acquire the property to be dedicated, the location of the dedication cannot be reasonably determined, or the location of the dedication is within a remainder parcel shown on a subdivision plat; and

WHEREAS, the 8600 South Improvements are contemplated to include certain features that enable it to pass over the adjacent Mountain View Corridor, so the location of the dedication cannot be reasonably determined at this time; and

WHEREAS, pursuant to the Deferral Ordinances, design may be deferred if the developer cannot reasonably design the improvements due to unique physical characteristics of the real property, the dedication is being deferred and reasonably requires that the design also be deferred, or the construction is being deferred and reasonably requires that the design also be deferred; and

WHEREAS, the dedication and construction of the 8600 South Improvements are being deferred and reasonably require design of the 8600 South Improvements to also be deferred, since the exact location of the Mountain View Corridor overpass has not been finalized; and

WHEREAS, pursuant to the Deferral Ordinances, construction may be deferred if: (1) the city engineer has prepared, and city council has reviewed the estimated cost of the deferred improvements based on the most recent and most applicable costs incurred by the city in similar projects and an analysis of the feasibility of installing the improvements within the twenty four (24) month period described in this article; (2) the improvements for which deferred construction is requested are eligible public improvements or they include public improvements for which some or all of the dedication is being deferred; and (3) based on physical characteristics of the

development and affected real property it is not feasible to install the improvements within the twenty four (24) month period described above and therefore deferring the installation to a future date is preferable to the city; and (4) the deferred improvements are not necessary for public health or safety or as a prerequisite to orderly development of the surrounding area; and

WHEREAS, it is not feasible to construct the 8600 South Improvements within twenty four months due to the need for a final design and funding for the Mountain View Corridor overpass; and

WHEREAS, the Developer and City have agreed that dedication, design and construction of the 8600 South Improvements should be deferred and a portion of the costs of the 8600 South Improvements roughly equivalent to the impacts of Developer's Development on said improvements should be paid by Developer pursuant to the Deferral Ordinances; and

WHEREAS, such payments from Developer to City shall correspond with the burdens imposed by each phase of the Development, such burden as is quantified in dollar terms on EXHIBIT B, attached hereto; and

WHEREAS, Developer and the City desire to document their mutual understanding regarding the deferral of the 8600 South Improvements.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Agreement and are made a part hereof.
2. Deferral. Pursuant to the Deferral Ordinances, design, dedication and construction of the 8600 South Improvements will be deferred.
3. Cash Deposit.
  - (a) Pursuant to the Deferral Ordinances, Developer will pay a cash deposit (the "Cash Deposit") in an amount equal to the estimated cost of the deferred dedication, design and construction of improvements based on the most recent and most applicable costs incurred by the city in similar projects, plus a contingency of fifteen percent (15%). For purposes of this Deferral Agreement, Developer and City agree that the "estimated cost of the deferred dedication, design and construction of improvements" shall be 50% of the estimated cost of a 70-foot wide collector road inclusive of the estimated cost of land, road improvements and utility improvements as shown in the itemized estimate in **Exhibit B**, attached hereto and incorporated herein by this reference.
  - (b) Payment of the Cash Deposit to the City shall be as follows: (1) 33.33% of the Cash Deposit shall be due and payable to the City at the time that the final plat for Phase 1 of the Copper Valley Subdivision is recorded; (2) 33.33 % of the Cash Deposit shall be due and payable to the City at the time that the final plat for Phase 2 of the Copper Valley Subdivision is recorded; and (3) 33.33% of the Cash Deposit shall be due and payable to the City at the time that the final plat for Phase 3 of the Copper Valley Subdivision is recorded. Notwithstanding the foregoing, the entire

Cash Deposit shall be due and payable ten years from the date of execution of this Agreement.

4. Land Dedication. Developer will cause to be dedicated to the City, at no cost to the City, that portion of real property in the Development that is owned by the Developer as of the date of this Agreement and located within the future 8600 South Improvements as shown approximately on **Exhibit A**. Said dedication shall be accomplished by recording of the approved subdivision plat for the phase of the Copper Valley Subdivision in which such property lies or by some other means at sole the discretion of the City if dedication is desired prior to such time of plat recording.

5. Term of Agreement. This Agreement shall terminate ten years from the date of execution.

6. Effect of Agreement. Nothing in this Agreement shall be construed to relieve Developer of any obligations imposed on Developer by Federal, State or local laws, ordinances, regulations, or standards and this Agreement applies only to public improvements specifically identified herein. However, the complete performance of this Agreement shall constitute complete satisfaction by Developer of all obligations imposed on Developer with respect to the dedications and completion of the 8600 South Improvements. Except for the satisfaction of all obligations imposed on Developer with respect to the dedications and completion of the 8600 South Improvements, the performance of this Agreement is not intended to vest in Developer any specific development rights for its Property that would not otherwise vest in Developer in the absence of this Agreement as a result of the approvals obtained from the City for the Copper Valley Subdivision. Moreover, nothing in this Agreement is intended to establish or infer the market value of any property dedicated to the City in conjunction with the development of the Copper Valley Subdivision.

7. Assignment. Neither the Agreement nor any of its provisions, terms or conditions may be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities and without the prior written consent of City.

8. Entire Agreement. This Agreement contains the entire agreement and understanding of the parties and supersedes all prior written or oral agreements, representations, promises, inducements, or understandings between the parties with regard to the subject matter herein.

9. Binding Effect. This Agreement shall be binding upon the parties hereto and their respective officers, employees, representatives, agents, members, successors, and assigns.

10. Validity and Severability. In the event a court, governmental agency, or regulatory agency with proper jurisdiction determines that any provision of this Agreement is unlawful, that provision shall terminate. If a provision is terminated, but the parties can legally, commercially, and practicably continue to perform this Agreement without the terminated provision, the remainder of this Agreement shall continue in effect.

11. Amendment. This Agreement may be amended only in a writing signed by the parties hereto.

12. Controlling Law, Jurisdiction and Venue. This Reimbursement Agreement shall be governed by the laws of the State of Utah. Venue shall be in Salt Lake County, Utah.

IN WITNESS WHEREOF, the parties hereto have executed this Deferral Agreement as of this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

CITY:

ATTEST:

By: \_\_\_\_\_  
Mayor Kim V. Rolfe

\_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

**L.H. PERRY INVESTMENTS, LLC:**

By: \_\_\_\_\_  
William O. Perry, Manager

Date: \_\_\_\_\_

**ACKNOWLEDGEMENT**

STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )

On this day personally appeared before me William O. Perry, to me known to be the Manager of L.H. Perry Investments, LLC, the limited liability company that executed the within and foregoing instrument, and acknowledged the instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute said instrument on behalf of said limited liability company.

Dated: \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_

My appointment expires \_\_\_\_\_

**Exhibit A**  
**(“Draft Copper Valley Subdivision Plat and Phasing Plan”)**

**SEE ATTACHED**



**Exhibit B**  
**("Cash Deposit")**

Developer's total Cash Deposit is \$340,758.30 , due and payable as follows:

Prior to recording the final plat for Phase 1, Developer shall pay to City an amount equal to \$113,586.10.

Prior to recording the final plat for Phase 2, Developer shall pay to City an amount equal to \$113,586.10.

Prior to recording the final plat for Phase 3, Developer shall pay to City an amount equal to \$113,586.10.

**Engineer's Estimate of Probable Costs**  
**Copper Valley Estates (8600 South Improvements)**  
**West Jordan , Utah**

*Focus Engineering & Surveying*  
 502 West 8360 South  
 Sandy, Utah 84070  
 (801) 352-0075

May 27, 2015  
 Thomas Romney, PE

Line #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
<b>Full 70' ROW for 8600 South (Length =1,145 LF)</b>					
	Property Cost	78960	SF	\$4.00	\$315,840.00
	4" Asphalt Roadway over 8" Roadbase	42365.00	SF	\$4.00	\$169,460.00
	10" Subbase	42365.00	SF	\$0.74	\$31,350.10
	6" Subbase for Curb and Gutter	2290.00	LF	\$3.25	\$7,442.50
	30" HB Curb & Gutter	2290.00	LF	\$11.35	\$25,991.50
	5' Sidewalk 5" thick with 6" base	11450.00	SF	\$3.95	\$45,227.50
	5' Parkstrip Landscaping	11450.00	SF	\$2.50	\$28,625.00
	8" Waterline w/ fittings	1136.00	LF	\$30.00	\$34,080.00
	18" SD	400.00	LF	\$47.00	\$18,800.00
	SD Combo	1.00	EA	\$3,300.00	\$3,300.00
	SD Inlet	1.00	EA	\$1,400.00	\$1,400.00
				<b>Total Price for above Items:</b>	<b>\$681,516.60</b>

Exhibit B